

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
STATE OF GEORGIA,  
Defendants.  
- - - - -

) CIVIL ACTION  
) NO. 1:16-cv-03088-ELR  
)  
)  
)  
)  
)  
)  
)

VIDEOTAPE DEPOSITION OF  
GARRY MCGIBONEY

Wednesday, June 8, 2022, 9:28 a.m., EST

HELD AT:

Robbins Alloy Belinfante Littlefield LLC  
500 14th Street, N.W.  
Atlanta, Georgia 30318

-----  
WANDA L. ROBINSON, CRR, CCR, No. B-1973  
Certified Shorthand Reporter/Notary Public

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

2

APPEARANCES OF COUNSEL

Appearing on Behalf of the Plaintiff:

KELLY GARDNER, ESQUIRE  
VICTORIA LILL, ESQUIRE  
LAURA TAYLOE, ESQUIRE  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20579  
T: 202.305.6630 F:  
E-mail: kelly.gardner@usdoj.gov  
victoria.lill@usdoj.gov  
laura.tayloe@usdoj.gov

Appearing on Behalf of the Defendant:

ED BEDARD, ESQUIRE  
DANIELLE HERNANDEZ, ESQUIRE  
MELANIE JOHNSON, ESQUIRE  
Robbins Alloy Belinfante Littlefield LLC  
500 14th Street, N.W.  
Atlanta, Georgia 30318  
T: 404.856.3261  
E-mail: ebedard@robbinsfirm.com  
dhernandez@robbinsfirm.com  
mjohnson@robbinsfirm.com

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

3

1 ALSO PRESENT:

2 VIA ZOOM:

3 FRANCES COHEN, ESQUIRE

4 PATRICK HOLKINS, ESQUIRE

5 RENEE WOHLLENHAUSE, ESQUIRE

6 ANDREA HAMILTON, ESQUIRE

7 LAURA CASSIDY TAYLOE, ESQUIRE

8 SANDRA LE VERT, ESQUIRE

15 ALSO PRESENT:

16 BRANDON BRANTLEY, Videographer

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

4

## INDEX OF EXAMINATIONS

GARRY MCGIBONEY

By Ms. Lill

Page 8

## INDEX OF EXHIBITS

## PLAINTIFF'S

NO.	DESCRIPTION	PAGE
Exhibit 94	Notice of Deposition	10
Exhibit 95	9/9/2016 Email Chain From Garry McGiboney To Marilyn Watson GA00513208-GA00513209	41
Exhibit 96	1/12/2020 mail Chain From Garry McGiboney To Camille Pendley With Attachment GA01624607-GA01624638	56
Exhibit 97	12/8/2018 Email Chain From Garry McGiboney To Kevin With Attachment GA01603055-GA01603063	63
Exhibit 98	Book Entitled "The Psychology of School Climate 2nd Edition." Electronically Produced GA01577636-GA01573914	68
Exhibit 99	1/12/2020 Email From Garry McGiboney To Diane Durrence GA02485396	76
Exhibit 100	6/26/2020 Email Chain From Garry McGiboney To Miriam Gudenrath GA00572801-GA00572804	105

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

5

## INDEX OF EXHIBITS (Continued)

## PLAINTIFF'S

NO.	DESCRIPTION	PAGE
Exhibit 101	9/10/2015 Email Chain From Garry McGiboney To Sue Smith GA00501979-GA00501983	116
Exhibit 102	Undated Email From Garry McGiboney To Senators and Representatives GA00511814	136
Exhibit 103	2/9/2017 Email Chain From Matt Jones To Garry McGiboney GA00519154-GA00519155	138
Exhibit 104	8/13/2020 Message Subject: GNETS GA01640573-GA01640574	149
Exhibit 105	9/8/2017 Email Chain From Garry McGiboney To Myrel Seigler GA00528290-GA00528291	165
Exhibit 106	9/9/2015 Email Chain From Garry McGiboney To Roma Amin With Attachment GA02479129-GA02479132.032	173
Exhibit 107	3/7/2019 Email From Garry McGiboney To Gail Smith GA00552974	188
Exhibit 108	6/11/2019 Email Chain From Garry McGiboney To Gail Smith GA00557687	196
Exhibit 109	12/8/2018 Email From Garry McGiboney To Kevin Tanner GA01603064 - Electronically Produced	207
Exhibit 110	Book Entitled "A Journey with Children an Characters" Electronically Produced GA0163061-GA01630923	214

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

6

## INDEX OF EXHIBITS (Continued)

## PLAINTIFF'S

NO.	DESCRIPTION	PAGE
Exhibit 111	12/29/2018 Email From Garry McGiboney To Talley Wells GA00549038-GA00549039	220
Exhibit 112	8/20/2019 Email Chain From Garry McGiboney To Vickie Cleveland GA00561590-GA00561593	226
Exhibit 113	8/28/2020 Email Chain From Talley Wells To Dante McKay GA00007169-GA00007171	236

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

7

1 THE VIDEOGRAPHER: This will be the video  
2 deposition of Garry McGiboney, being taken in  
3 the matter of United States of America versus  
4 State of Georgia.

5 Today's date is June 8th, 2022.

6 The time on the record is 9:28 a.m.

7 My name is Brandon Brantley. I'm the  
8 videographer. The court reporter is Wanda  
9 Robinson.

10 Counsel, please introduce yourselves for  
11 the record, after which the court reporter will  
12 swear in the witness.

13 MS. LILL: Good morning. My name is  
14 Victoria Lill, on behalf of the United States.

15 MR. BEDARD: Good morning. My name is Ed  
16 Bedard, on behalf of the State of Georgia.

17 I'm joined by my colleagues Melanie  
18 Johnson and Danielle Hernandez.

19 MS. LILL: And here in the room with me I  
20 have Kelly Gardner on behalf of the United  
21 States, as well as Laura Tayloe.

22 I will also ask -- would you like to have  
23 the folks on Zoom introduced?

24 All right. We're going to respectfully  
25 decline to introduce everybody on the Zoom

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

8

1 session, but we appreciate your attendance.

2 - - - - -

3 GARRY W. MCGIBONEY,

4 being duly sworn, was examined and testified as

5 follows:

6 - - - - -

7 EXAMINATION

8 BY MS. LILL:

9 Q Good morning, Dr. McGiboney.

10 A Good morning.

11 Q Thank you for coming today.

12 A Sure.

13 Q My name is Victoria Lill. As you heard, I  
14 represent the United States in this matter.

15 Can you please state your -- state your  
16 full name for the record.

17 A Garry Wade McGiboney.

18 Q Great. And I imagine that your counsel  
19 has explained much of this to you, but today  
20 basically we're going to have a lengthy  
21 conversation, and I'm going to ask you questions,  
22 and your only job is to answer them honestly and  
23 completely. Okay?

24 A Okay.

25 Q The court reporter has sworn you in, which

9

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

9

1 means that everything you say here today is under  
2 oath and must be truthful.

3 Do you understand that?

4 A Yes.

5 Q So the court reporter is going to write  
6 down what you say and what I say in order to create  
7 a transcript of our conversation. So in order to  
8 ensure that she gets everything down, if you could  
9 please speak at a measured pace and clearly.

10 It's also important that you say yes  
11 versus saying uh-huh or versus nodding your head, so  
12 that she can get that down on the record.

13 And, finally, you and I have to avoid  
14 talking over one another. So if you could let me  
15 finish questions before you start an answer, and I  
16 will do the same for you.

17 If at any point you don't understand a  
18 question, please let me know that and I can try to  
19 clarify the question.

20 Do you understand that?

21 A Yes.

22 Q Great. And if you need a break at any  
23 time, you should tell me or tell your attorney.  
24 We'll probably finish whatever answer to whatever  
25 question we've asked -- I've asked you, if we're in

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

10

1 the middle of it, and then we can identify a time to  
2 take a break.

3 Does that, does that sound good?

4 A Yes.

5 Q Great. And sometimes it happens that you  
6 will give me an answer as completely as you can at  
7 the time, and then later on during our time together  
8 you may remember some additional information in  
9 response to an earlier question. If that happens,  
10 please just tell me that you would like to add  
11 something you said earlier, and you can do that.  
12 Okay?

13 A Yes.

14 Q Great. Is there any reason you can think  
15 of why you will not be able to answer my questions  
16 truthfully and completely today?

17 A No.

18 Q Do you have any questions before we  
19 proceed today?

20 A No.

21 MS. LILL: I'm handing the court reporter  
22 what I'd like to mark as exhibit -- Plaintiff's  
23 Exhibit 94.

24 (WHEREUPON, Plaintiff's Exhibit-94 was  
25 marked for identification.)

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

11

1 BY MS. LILL:

2 Q Dr. McGiboney, this is the notice we  
3 served on the State for your deposition in this  
4 matter. Have you seen this --

5 A Yes.

6 Q -- before?

7 And who showed you this time?

8 A Received it by hand delivery.

9 Q Okay.

10 A To my home.

11 Q And approximately when was that?

12 A Approximately two weeks ago.

13 Q Okay.

14 A Maybe three weeks ago. I'm not sure.

15 Q And have you ever been deposed before?

16 A Yes.

17 Q When was that?

18 A 15 years ago.

19 Q And in what context?

20 A More than once. Once was a case when I  
21 worked in the DeKalb County school system regarding  
22 a school safety matter, and then prior to that a  
23 personal deposition in a personal injury when I  
24 suffered a traumatic brain injury in an accident of  
25 someone else's making.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

12

1 Q Okay. And you said both of those were  
2 approximately 15 years ago?

3 A 15 -- the personal deposition was closer  
4 to 20 years ago.

5 Q Okay. And were you a plaintiff or  
6 defendant in one of those lawsuits?

7 A The DeKalb was being sued, and the  
8 personal injury I was the plaintiff.

9 Q The plaintiff, okay.  
10 And before today had you heard about this  
11 case?

12 A Yes.

13 Q When do you recall first hearing about it?

14 A Several years ago. At least five years  
15 ago.

16 Q And what do you know about this case?

17 A I know that the Department of Justice is  
18 questioning the State on the GNETS programs.

19 Q And what about the GNETS programs?

20 A The quality of the programs.

21 Q Anything else?

22 A That pretty much sums it up.

23 Q What did you do to prepare for this  
24 deposition today?

25 MR. BEDARD: I'll say, just, Garry, you

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

13

1 can say if you, if you met with an attorney.  
2 Just don't speak about anything we talked  
3 about.

4 A Other than that, I haven't prepared  
5 anything.

6 Q Okay. So did you meet with counsel?

7 A We talked.

8 Q And with whom did you meet?

9 A Ed Bedard.

10 Q And how many times?

11 A Once.

12 Q For approximately how long?

13 A An hour.

14 Q Okay. And Mr. Bedard is representing you  
15 in this matter?

16 A Representing the State, as I understand  
17 it.

18 Q Okay. Did counsel show you documents to  
19 prepare?

20 A We looked at, I believe, three documents.

21 MR. BEDARD: And I'll say, you can again  
22 say you've looked at documents, but I would  
23 object to the extent it calls for any specific  
24 documents that you looked at.

25 Q So in preparing for the deposition, aside

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

14

1 from meeting with counsel, did you discuss the  
2 substance of the deposition with anybody else?

3 A No.

4 Q None of your former colleagues at the  
5 Department?

6 A No.

7 Q -- of Ed?

8 So I want to just run through -- as you  
9 know, the world of education is filled with  
10 acronyms, and some of those we'll be using sort of  
11 repeatedly today, so I want to just run through them  
12 and make sure we're on the same page so we don't  
13 have to spell them all out.

14 So if I say "DBHDD," I'm referring to the  
15 Georgia Department of Behavioral Health and  
16 Developmental Disabilities.

17 Is that your understanding of that  
18 acronym?

19 A Yes.

20 Q And do you understand the acronym "DCH" to  
21 mean the Georgia Department of Community Health?

22 A Yes.

23 Q And the "Georgia DOE," or "GaDOE," do you  
24 understand that to mean the Georgia Department of  
25 Education?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

15

1 A Yes.

2 Q And the term "GNETS," do you understand  
3 that to mean the Georgia Network for Educational and  
4 Therapeutic Support?

5 A Yes.

6 Q "BIP," or a BIP, do you understand that to  
7 mean Behavioral Intervention Plan?

8 A Yes.

9 Q An "FBA," do you understand that to mean a  
10 Functional Behavior Assessment?

11 A Yes.

12 Q And "PBIS," do you understand that to mean  
13 Positive Behavioral Interventions and Supports?

14 A Yes.

15 Q And I may refer in the deposition to a  
16 general education setting. Do you understand that  
17 to mean a public school in Georgia where children  
18 with significant emotional disabilities and other  
19 behavioral health conditions receive instruction and  
20 services alongside children who do not have  
21 disabilities?

22 A Yes.

23 Q Dr. McGiboney, where did you go to school,  
24 to college?

25 A Georgia State university.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

16

1 Q Georgia State. And when did you graduate  
2 from Georgia State?

3 A 1984. I'm the oldest person in the room.

4 Q And what was your major of study in  
5 college?

6 A Educational psychology.

7 Q And is that the degree that you received?

8 A I'm sorry?

9 Q And what degree did you receive?

10 A Ph.D.

11 Q In undergrad?

12 A Psychology.

13 Q Okay.

14 A Bachelor's and master's.

15 Q So you received a bachelor's from Georgia  
16 State?

17 A Yes.

18 Q And where did you receive your master's?

19 A Georgia State.

20 Q Georgia State. And what year was that?

21 A '78. 1978.

22 Q So you -- I'm sorry. You graduated  
23 undergrad, you told me, '84?

24 A That was the Ph.D.

25 Q When did you graduate undergrad?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

17

1 A The exact year?

2 Q It's okay if you don't remember.

3 A I don't recall the exact year.

4 Q So you got your Ph.D. in '84. Was that  
5 also from Georgia State?

6 A Yes.

7 Q What was your area of focus for your  
8 Ph.D.?

9 A Educational psychology, school psychology,  
10 and administration.

11 Q And so you received a license -- you were  
12 a psychologist, essentially, after having graduated?

13 A I was a school psychologist.

14 Q Okay. How long were you licensed to  
15 practice as a school psychologist?

16 A Certification in Georgia to be a school  
17 psychologist, I carried that until, I think -- I  
18 think it was 1990.

19 Q Are you currently employed?

20 A Yes.

21 Q By whom?

22 A Sharecare, Incorporated.

23 Q And what's your title at Sharecare?

24 A Director of Government and Education  
25 Programs.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

18

1 Q When did you assume that position?

2 A October of 2020.

3 Q Can you please describe the objectives of  
4 Sharecare?

5 A Sharecare is a digital health technical  
6 company that supports about 84 health insurance  
7 companies through their digital platform, but also  
8 in helping clients navigate the health system.

9 Q What are your duties and objectives in  
10 this role?

11 A Well, I work with government agencies,  
12 state government agencies, because state employees  
13 are covered by the State health benefits plan, and  
14 there are programs to enhance employee well-being  
15 through a program called Be Well, and we are trying  
16 to encourage more state employees, all 400,000 of  
17 them, to participate more in the Be Well program,  
18 which is an employee well-being program.

19 Q Okay. And are you involved with children  
20 at all in this?

21 A Not directly, no. I work with education  
22 agencies through employee programs, doing  
23 presentations and at conferences about the employee  
24 well-being program to get more state employees to  
25 participate in the well-being program.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

19

1 Q So right now your work is really focused  
2 on employee well-being?

3 A Yes. That's correct.

4 Q And do you interact with Georgia  
5 Department of Education personnel in this role?

6 A Seldom. We may cross paths at a  
7 conference, but other than that, no.

8 Q How frequently would you say?

9 A Not often.

10 Q Before this position, what was your prior  
11 employment position?

12 A Georgia Department of Education.

13 Q And what was, what was your title?

14 A Deputy superintendent of Policy.

15 Q And how long did you hold that role?

16 A Approximately 12 years.

17 Well, let me correct that. That specific  
18 job was -- well, no, that was about 12 years, but I  
19 did have another position at the Department of  
20 Education prior to that as associate superintendent  
21 of Support Services and Innovation.

22 Q Okay. So I want to break down the 12  
23 years that you were deputy superintendent of Policy.

24 Did your precise title change at all  
25 within those 12 years?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

20

1           A       I'm sure the precise title probably did  
2       change. In the last year it was deputy  
3       superintendent of School Climate and Safety, or some  
4       of the policy issues became more related to school  
5       climate and safety. So that title was changed to  
6       deputy superintendent of School Climate and Safety  
7       -- School Climate and Safety.

8           Q       So approximately when did that happen?

9           A       '20, '21. I'm sorry.

10                   2019. 2019.

11           Q       So in 2019, you began to oversee school  
12       climate and safety?

13           A       Well, that was already part of the duties  
14       under the previous title, but there was more of a  
15       focus on that.

16           Q       And before 2019, what was -- what was your  
17       sort of more precise title or focus?

18           A       It was policy in charter schools.

19           Q       Policy in charter schools. And how long  
20       did that -- how long were you in that role?

21           A       That started in 2010. So that title I  
22       don't believe changed from 2010 to 2019. I believe  
23       it was the same.

24           Q       Did your job responsibilities change from  
25       2010 to 2019?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

21

1 A Duties were added over the years. It  
2 started out being primarily working with the State  
3 Board on policies and working with the legislature  
4 on educational legislation, where I would go and  
5 answer questions related to bills -- potential  
6 legislation that could impact education.

7 So legislators would speak to me about the  
8 possible impacts, both the pro and con of bills they  
9 were proposing.

10 Then that was the beginning of the charter  
11 school development in Georgia, and so that role  
12 expanded as we in Georgia started adding more  
13 charter schools. So I started working more with  
14 that area.

15 Q Before 2010, what was your title?

16 A That was when -- 2019, it was shifted to  
17 deputy superintendent of School Climate and Safety.  
18 So in 2020, when I left the department, that was the  
19 title.

20 Q Right. So in '20 -- I'm sorry. Before  
21 2010, though, before you were --

22 A Before 2010?

23 Q -- you in the policy and charter position,  
24 what were you -- what was your role?

25 A Associate superintendent of -- as I recall

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
22

1 it was Support Services and Innovation.

2 Q And how long were you in that position?

3 A It wasn't long. When I came to the  
4 Department of Education in 2007, I was a program  
5 manager for Safe and Drug-Free Schools for  
6 approximately a year. Then I was asked to become  
7 associate superintendent. In that first position,  
8 about a year and a half. And associate  
9 superintendent, only for about a year and a half.

10 Q Okay. And before you were -- before 2007?

11 A The DeKalb School System.

12 Q What was your role in DeKalb?

13 A Deputy superintendent of Support Services.

14 Q What were your job responsibilities in  
15 that role?

16 A I oversaw the school psychologists, school  
17 social workers, school nurses, special education,  
18 school resource officers, school safety, legislative  
19 affairs, and our outreach with the DeKalb juvenile  
20 court, as well as the state court.

21 Q How long were you in that role?

22 A As deputy? Three years.

23 Q And prior to that?

24 A Associate superintendent.

25 Q Overseeing what?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
23

1           A       The alternative school discipline  
2 tribunals, and school safety.

3           Q       How long were you in that role?

4           A       I was in that role with those  
5 responsibilities for several years. I don't  
6 remember the exact number of years, but the title  
7 changed even though the responsibilities remained  
8 the same. It's just that the amount of  
9 responsibilities increased. So that's why the title  
10 was changed from executive director to associate.

11          Q       So then you were executive director prior  
12 to that?

13          A       Right.

14          Q       And what is executive director of?

15          A       Student relations. And, again, that was  
16 primarily school safety, student discipline, and the  
17 discipline tribunals.

18          Q       You have a long history in education?

19          A       Prior to that, I was a school  
20 psychologist.

21          Q       That was my next question. So you were a  
22 school psychologist in DeKalb?

23          A       Yes. Beginning in 1975.

24          Q       And so when did, when did you end that  
25 work?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

24

1           A       Well, that -- I continued to be a school  
2 psychologist for several years. It was altogether  
3 about 10 years. The last five of those were a  
4 combination of working as a school psychologist,  
5 working with school discipline and working with the  
6 discipline tribunals. I was doing all of that.

7           Q       But you were working as a school  
8 psychologist with sort of seeing students as a  
9 psychologist --

10          A       Yes, yes.

11          Q       -- from '75 through what period?

12          A       You know, Goss-Lopez, the DeKalb School  
13 System developed a due process. After developing  
14 the student code of conduct as required by  
15 Goss-Lopez. So we developed a tribunal process and  
16 I served on the tribunal as a school psychologist.

17                 And as that developed into more of a  
18 requirement, then I shifted into administration and  
19 started doing more administrative work related to  
20 the discipline tribunals.

21          Q       Was that your first professional job  
22 post-Ph.D., was school psychologist --

23          A       Yes.

24          Q       -- in DeKalb?

25          A       I did not have a Ph.D. at that time,

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
25

1     though.

2             Q     Okay.

3             A     That was '75.

4             Q     Okay.

5             A     I had a Master's degree.

6             Q     Okay. So when you were working with  
7 students as a school psychologist, did you provide  
8 therapy?

9             A     No. Assessment.

10            Q     Assessments. And can you tell me about  
11 what that process was like?

12            A     It was pretty standard operating  
13 procedure. At that time, a school would make a  
14 referral for a student to be evaluated after going  
15 through other interventions and prevention  
16 activities, and so I'd schedule a meeting with the  
17 parents to explain to them the process of the  
18 evaluation, psychological evaluation. Really, it  
19 was called an education psychological evaluation.  
20 And then I would meet individually with the student  
21 to give an intelligence test, achievement test, and  
22 typically a brief personality inventory.

23            Q     Were you familiar with the GNETS program  
24 when you were working in DeKalb?

25            A     Yes. We had a GNETS program in DeKalb.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIAJune 08, 2022  
26

1 It was called Psycho Educational Center at that  
2 time.

3 Q Did you interact with it?

4 A No.

5 Q Did you tell me that you were overseeing  
6 alternative schools and essentially mental health  
7 services in DeKalb?

8 A No. I'm not sure what time frame you're  
9 talking about, but the student discipline process  
10 and student discipline and alternative school,  
11 DeKalb had several alternative schools. One was for  
12 students who had been suspended or expelled by the  
13 tribunal, and they were suspended or expelled more  
14 than 10 days. So we offered them an alternative  
15 school to attend rather than return to their  
16 homeschool or sitting at home.

17 Then we had an alternative school that was  
18 connected with the juvenile court. Juvenile court  
19 would contact me with a chronic truant child and we  
20 would place them in truancy alternative school,  
21 which was a small setting. And the court would have  
22 probation officers there as well.

23 And we had other alternative programs. We  
24 had another one, transition academy, students coming  
25 out of DJJ, Department of Juvenile Justice. Instead

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
27

1 of them going directly into their regular school  
2 setting, we had a transition academy for them to  
3 make the adjustment back into the school setting  
4 before they actually attended the regular school  
5 setting.

6 Q But you did not in any way oversee the  
7 GNETS program?

8 A No.

9 Q Did you refer students to the GNETS  
10 program?

11 A I don't recall referring any students to  
12 the GNETS. Now, I may have because that was a long  
13 time ago, but if I did, it was very, very rare.

14 Q And who in the DeKalb County School System  
15 would have overseen the GNETS program or interaction  
16 with the GNETS program?

17 A I believe it was Glenda Molten at that  
18 time.

19 Q What was her role?

20 A Director of special programs, I believe it  
21 was. I don't remember the exact title.

22 Q Okay.

23 A And of course I want to clarify. In any  
24 referral to -- there was no such thing as a referral  
25 to GNETS. It was an IEP.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
28

1 After evaluation, there would be an IEP  
2 meeting, and that process, if it was a referral to  
3 GNETS, would have been made by the IEP, not by me.

4 Q So I want to go back to your time as  
5 deputy superintendent of Policy.

6 Can you -- I think you said essentially  
7 that was from 2010 to 2019.

8 Can you list out your various job  
9 responsibilities in this particular position?

10 A As I said, I worked with the State Board  
11 of Education policy development. I worked with  
12 legislators on reviewing education-related bills,  
13 and in that they would ask questions about education  
14 and what their bill may do for, or if there was any  
15 intended consequence we would talk about that.

16 So I frequently testified at the  
17 legislature and the house subcommittee or house  
18 committee meetings and senate committee meetings.

19 We worked with the charter schools, with  
20 the state charter commission. We worked -- we  
21 reviewed the budgets for the residential treatment  
22 facilities.

23 Because the department was -- the  
24 department is a flow-through for the funding that  
25 goes to local schools, and that was the case with

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIAJune 08, 2022  
29

1 the residential treatment facilities.

2 Homeschool programs, if a parent wants to  
3 homeschool their child, they have to register with  
4 the Department of Education. That's all they have  
5 to do, but they have to register with the department  
6 declaring that they are going to homeschool their  
7 child.

8 School safety, in that we worked with the  
9 Georgia Emergency Management Agency to help schools  
10 develop their safe school plans. And I frequently  
11 communicated with schools if there was information  
12 that GEMA, Georgia Emergency Management Agency,  
13 wanted to share with school districts, they needed  
14 -- we had direct contact with them. So I could send  
15 emails to them in case there was any kind of a  
16 pending emergency, like if there was the remnants of  
17 a hurricane heading into State of Georgia, could  
18 have potential impact on the school day. I would  
19 alert the schools.

20 I think that covers everything.

21 Q And who did you report to?

22 A The chief of staff.

23 Q Who was?

24 A Matt Jones.

25 Q And who did you supervise?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
30

1 A You want all of them by name or their  
2 positions or what?

3 Q How many, approximate -- how many people,  
4 approximately?

5 A Direct, about 12. About 12 direct  
6 reports.

7 That includes secretarial staff,  
8 administrative assistance.

9 Q Can you, can you just list them by title?

10 A I'll try. We had a director of policy,  
11 director of charter schools, program manager for  
12 safe and drug-free schools, a specialist for safe  
13 and drug-free schools, homeschool coordinator but  
14 she also worked with residential treatment  
15 facilities. And there were two staff members that  
16 helped her with homeschool. They were  
17 administrative assistants.

18 With the charter director, there were  
19 four, there were four staff members under the  
20 charter director, including a staff attorney.

21 I think that's all there were.

22 Q In that role did you serve on any state  
23 level committees or work groups?

24 A State level? I'm not sure what you mean  
25 by state level.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

31

1 Q Well, did you serve on any committees or  
2 working groups in that role?

3 A Yes.

4 Q And can you -- could you list them for me?

5 A Okay. The Georgia Supreme Court appointed  
6 me to serve on the Georgia Supreme Court's Justice  
7 for Children Committee. I served two -- three terms  
8 on that. Those were two-year terms. I served three  
9 terms on that.

10 I served on the State's Juvenile Detention  
11 Alternative Initiative Committee. In fact, I'm  
12 still serving on that. JDAI. In fact, I'm the  
13 chair of that for the State.

14 I was on the cabinet of the Georgia  
15 Reading Campaign, which is public/private entity  
16 that's part of the Georgia Family Connection  
17 Partnership.

18 The Carter Center School Base Behavioral  
19 Health Advisory Committee.

20 The Georgia Partnership for Educational  
21 Excellence, Learning Environment Committee.

22 The Behavioral Health Reform and  
23 Innovation Commission, as a subcommittee member of  
24 the subcommittee on children and adolescents.

25 I think that's all.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
32

1 Q Must have been tired between 2010 and  
2 2019?

3 A I left, I left out one.  
4 The Council on Alcohol and Drugs.

5 Q Thank you for listing those out for me.  
6 And now just moving to the last position  
7 that you held, which you said was deputy  
8 superintendent for --

9 A School Safety and Climate.

10 Q -- School Safety and Climate.  
11 Can you tell me about your roles and  
12 responsibilities in that position?

13 A I was working very closely with the  
14 Georgia Emergency Management Agency, and also worked  
15 with FEMA, Federal Emergency Management Agency.

16 In fact, FEMA asked me to help -- FEMA  
17 offers six courses for school districts across the  
18 nation on school safety, and I helped -- they asked  
19 me to help write the curriculum.

20 And I do -- I am a master trainer for the  
21 U.S. Department of Education Ready Emergency  
22 Management for Schools Center, called REMs, on  
23 behavior threat assessment.

24 So I worked in the world of the emergency  
25 management emergency preparation. I helped schools

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

33

1 -- I created safe school template, because in  
2 Georgia, by state law, schools have to have a safe  
3 school plan. So working with experts, we developed  
4 a safe school plan template, and that's what  
5 schools -- most of the schools are using as their  
6 safe school plan guide.

7 Worked with the State Patrol; worked with  
8 legislators on legislation pertaining to school  
9 safety, including what courses may be most  
10 applicable for school resource officers. And worked  
11 with the Georgia Association of School Resource  
12 Officers and worked with -- we had a School Justice  
13 Partnership, where I worked with several juvenile  
14 judges and worked with the office of the courts,  
15 court administration of CA, on the School Justice  
16 Partnership, where we actually went into communities  
17 and tried to support the development of a  
18 collaborative between the local school system and  
19 the local juvenile court.

20 Also, I helped schools with the  
21 implementation of the state law which is School  
22 Climate and Student Attendance Protocol Committee.  
23 It's required in Georgia for every Superior Court to  
24 create a School Climate and Student Attendance  
25 Protocol Committee, which is made up of local DA,

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

34

1 local solicitor, local school system, local public  
2 health. All the other entities that touch children.

3 So I actually would go to local juvenile  
4 courts, because usually the Superior Court judge  
5 would assign that responsibility to the juvenile  
6 court. In Georgia, the juvenile court judges,  
7 except for two exceptions, are appointed by the  
8 Superior Court. So they would ask me to come in and  
9 talk to their juvenile court about how to develop  
10 the protocol for implementing the State law. I did  
11 that quite often.

12 And then also I worked with PBIS. We  
13 worked very diligently to expand PBIS to as many  
14 schools as possible. When I left the department, we  
15 were up to 1,400 schools that were implementing  
16 PBIS, and that was part of the school climate title  
17 because school climate is of course enhanced by the  
18 PBIS model.

19 That's the SAMHSA approved or SAMHSA  
20 endorsed model for improving school climate, is  
21 PBIS. I worked with that team.

22 Q So PBIS and school climate fell  
23 underneath --

24 A Yes.

25 Q -- your purview in that role?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

35

1 And how did -- have you worked to enhance  
2 mental health supports for students in schools?

3 A Well, I worked -- I'm on the Advisory  
4 Committee of the Carter Center's school-based  
5 behavioral health. So I've actually done  
6 presentations at the Carter Center, at the Rosalynn,  
7 Rosalynn Carter Annual Mental Health Symposium.

8 MR. BEDARD: I'll object to form on the  
9 last question.

10 BY MS. LILL:

11 Q In your last -- in your last position, who  
12 did you report to?

13 A Chief of staff.

14 Q Was also Matt Jones?

15 A Yes.

16 Q And who were your direct reports?  
17 Just by title.

18 A Direct reports to me?

19 Q Yes, in your role as --

20 A All those ones I just listed before, those  
21 12.

22 Q That carried over when you went to School  
23 Safety and Climate?

24 A I understand your question. Those direct  
25 reports, it was -- including the two positions that

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
36

1 GEMA had part-time with us, we had a collaborative  
2 with GEMA so that they would provide two staff  
3 members, but they really were not under my direct  
4 supervision but I worked directly with them. That  
5 was five, five direct reports.

6 Q Did any of them relate to PBIS or School  
7 Climate?

8 A Yes.

9 Q What were those titles?

10 A I'm sorry?

11 Q What were the titles of the individuals  
12 who were involved?

13 A The direct report was the program -- the  
14 State program manager for PBIS. And in that, that  
15 was a staff of about 20.

16 Q So the state program manager for PBIS  
17 reported directly to you?

18 A Yes.

19 Q And what was that individual's name?

20 A Jason Byars.

21 Q In that role who in the Georgia Department  
22 of Education was not a direct report to you, did you  
23 most frequently interact with?

24 A Was not a direct report?

25 MR. BEDARD: Object to form.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

37

1           A       I'm not sure how to answer that. You  
2 know, we had cabinet meetings and we had impromptu  
3 meetings to discuss policies or to discuss an issue.  
4 So that's kind of hard to answer that question  
5 specifically.

6           Q       So members of the executive cabinet?

7           A       Yes. Yes.

8           Q       Okay. Do you believe that providing  
9 access to mental health services and supports in  
10 schools is important?

11          A       Yes.

12          Q       And why is that?

13          A       Because of access.

14          Q       Tell me more about what you mean by that.

15          A       That's where the children are most of the  
16 day, and it's -- it would make sense if we could  
17 provide services for children that's intended to  
18 improve their lives, then school could be an access  
19 point for that.

20          Q       And do you believe that mental health  
21 services when provided in schools improves the lives  
22 of children?

23                   MR. BEDARD: Object to form.

24          A       Well, there are, there are services in  
25 schools now provided by BHDD called the Apex

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

38

1 program, and it seems to be working well.

2 Q When you worked at the Department of  
3 Education, did you believe providing access to  
4 mental health services and supports in schools was  
5 important?

6 A Yes.

7 MR. BEDARD: Object to form.

8 A That's why I was on the Advisory Committee  
9 for the Carter Center.

10 Q What information or data supports or  
11 informs your beliefs about the importance of mental  
12 health services in schools?

13 MR. BEDARD: Object to form.

14 A My work as a school psychologist.

15 Q Anything else?

16 A You asked where did that come from and it  
17 came from my work as a school psychologist.

18 Q Are you aware of other information or data  
19 that informs your belief about the importance of  
20 mental health services in schools?

21 A Well, there's data related to increasing  
22 access to mental health services when students are  
23 in school, due to transportation problems primarily.  
24 Transportation, meaning it's difficult for some  
25 parents to check their child out of school -- get

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
39

1 off work, check their child out of school and then  
2 go to a therapist or a treatment center, and then  
3 come back to school. Some parents, it's very  
4 difficult for them to have that transportation.

5 So access is a big issue.

6 But that's also true with physical  
7 services, too. That's why dental hygiene is an  
8 issue. That's why there's a mobile unit that drives  
9 around schools in the rural part of Georgia that  
10 offers dental health. So it's not just mental  
11 health.

12 It's just a rural access issue.

13 Q And what are the positive effects of  
14 enhanced access to mental health in schools, if any?

15 MR. BEDARD: Object to form.

16 A Well, hopefully, you have a healthier  
17 child and you have improved or increased -- improved  
18 academic outcomes.

19 Q And have you advocated for enhanced access  
20 to mental health in schools in your roles at the  
21 Georgia Department of Ed?

22 A We encouraged schools to work with the  
23 Community Service Boards.

24 Q In what other ways have you advocated for  
25 enhanced access to mental health in schools in your

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
40

1 roles at the Department of Ed?

2 A There's been legislation over the years  
3 that supported the idea of a concept of increased  
4 access for mental health services for children,  
5 including schools but not limited to schools.

6 Q Are there any other ways that you  
7 advocated for enhanced access to mental health in  
8 schools?

9 A Well, we've advocated -- the Commission,  
10 the Behavioral Health Reform and Innovation  
11 Commission has advocated for House Bill 1013, which  
12 passed this recent session, called the Georgia  
13 Mental Health Parity Act, and while it doesn't  
14 specifically say schools, it's related to increasing  
15 the workforce in mental health to elevate access for  
16 children, adolescents and adults to mental health  
17 services.

18 Q You mentioned CSBs?

19 A Community Service Boards.

20 Q What is a Community Service Board?

21 A That's the local community provider of  
22 behavioral health services. They are linked to the  
23 Department of Behavioral Health and Developmental  
24 Disabilities.

25 Q And tell me more about the work you have

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

41

1 done with -- you mentioned there was --

2 A I haven't worked directly with them,  
3 except when I was in DeKalb and worked with the  
4 DeKalb CSB. But we just encourage schools to have a  
5 relationship with a Community Service Board so they  
6 can share resources.

7 For example, if there's a -- we were  
8 advocating for mental health awareness. So we  
9 advocated for the Community Service Boards to  
10 provide some mental health awareness training for  
11 educators, but we were able to, through the budget  
12 process, get a line item in 2018 by the Georgia  
13 legislature to provide mental health awareness for  
14 educators through the -- through NAMI, the National  
15 Alliance on Mental Illness and through Mental Health  
16 America. And through the Georgia State  
17 collaborative, they offer training, mental health  
18 awareness training for educators.

19 MS. LILL: May I ask the court reporter to  
20 mark this document as 95 for plaintiffs.

21 (WHEREUPON, Plaintiff's Exhibit-95 was  
22 marked for identification.)

23 BY MS. LILL:

24 Q Dr. McGiboney, this is an email exchange  
25 between you and Marilyn Watson. The last email was

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
42

1 sent on September 9th, 2016.

2 And at the very top, the subject matter is  
3 "Re: Please."

4 And if you see at the very top of the  
5 first page -- I'm sorry. It's -- the Bates-stamp is  
6 Georgia, GA00513208.

7 Your email to Ms. Watson -- who is Ms.  
8 Watson, first of all?

9 A She was the program manager for Safe and  
10 Drug-Free Schools.

11 Q And you say to her in this email: "Tell  
12 them I'm going all over the State endorsing the need  
13 for a comprehensive children's mental health plan."

14 Do you see that?

15 A Yes.

16 Q Can you tell me more about your efforts  
17 there?

18 A We were trying to -- we were endorsing the  
19 idea of a comprehensive mental health plan for  
20 children's mental health based on the lack of access  
21 in some communities to mental health services. So I  
22 was talking to different community groups and  
23 schools trying to get information about what access  
24 they actually have to mental health services for  
25 children.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

43

1 Q And in your view, would a comprehensive  
2 children's mental health plan encompass school-based  
3 mental health services?

4 A It would be community and school. Again,  
5 I can't emphasize it enough, the primary point is  
6 access.

7 Q When we talk about school-based mental  
8 health, have you been an advocate for mental health  
9 services in student zone schools?

10 A In?

11 Q In student zoned schools.

12 A Student zoned schools? I don't know what  
13 that means.

14 Q The general -- the general education  
15 schools which they are --

16 A Yes.

17 Q -- going to attend?

18 A Yes.

19 Q What initiative have you championed in  
20 that regard?

21 A There's been legislation. I've testified  
22 in the house study committees and senate study  
23 committees on bills that related to children's  
24 mental health and access to mental health services  
25 in schools came up during those hearings.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

44

1 Q What would you consider to be the  
2 successes in your efforts to advocate for  
3 school-based mental health services?

4 A Well, House Bill 1013, the Georgia Mental  
5 Health Parity Act, that was based on a lot of the  
6 work that was done by the Behavioral Health Reform  
7 and Innovation Commission and, as I said earlier,  
8 I'm on the subcommittee of children and adolescents,  
9 and that bill enforces and requires parity.  
10 Insurance companies treat mental health as physical  
11 health, which will have an impact on children in the  
12 community as well as schools.

13 So I think that's a major step toward  
14 improving access to mental health services to  
15 everyone in Georgia, including children and  
16 adolescents, as well as adults. And that was really  
17 the culmination of a lot of bills that were -- a lot  
18 of study committees, I should say, on mental health  
19 that started many years ago.

20 Q In the, in the document that I -- we were  
21 just looking at, you say: "If anyone brings up  
22 GNETS, simply say that we can't say much at this  
23 time because of the pending litigation but that more  
24 access to mental health services would help that  
25 situation too."

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

45

1 Do you see that?

2 A Yes.

3 Q Which pending lawsuit were you referring  
4 to?

5 A At that time I -- I guess it's this one,  
6 the Department of Justice.

7 Q And what did you understand about this  
8 lawsuit at that time?

9 A The same as my understanding now, that the  
10 Department of Justice has concerns about the quality  
11 of services at the GNETS.

12 Q And the email goes on to say that more  
13 access to mental health services would help that  
14 situation too."

15 By more access to mental health services,  
16 were you referring to the need for a comprehensive  
17 children's mental health plan?

18 A Yes. When, when referring to GNETS,  
19 that's also a referral to all public schools. That  
20 if we improve, increase access to mental health  
21 services for children in schools and in communities,  
22 that would include all schools and all programs,  
23 ideally.

24 Q And that would include school-based mental  
25 health services?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

46

1 A Yes.

2 Q And what is, what is that situation you  
3 refer to in this document?

4 A The GNETS.

5 Q So tell me how mental health services in  
6 schools would help the situation with GNETS?

7 A Well, GNETS, like all the other public  
8 schools, could benefit from more access to more  
9 service. A part of the issue is the workforce.  
10 There are a lot -- there are many schools, including  
11 GNETS, who would like to have more mental health  
12 service but access to mental health service has been  
13 a challenge for decades in Georgia. Just not enough  
14 psychiatrists, not enough clinical psychologists,  
15 there are not enough licensed professional  
16 counselors, and there are not enough psychiatric  
17 social workers.

18 Just go down the list of those who touch  
19 mental health, and there's a shortage in every  
20 field.

21 Q Did you feel at the time that school-based  
22 mental health services would help Georgia defend  
23 against the United States lawsuits alleging GNETS  
24 did not provide integrated services?

25 A No. No, ma'am. My concern is about what

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

47

1 was best for children. I wasn't concerned about the  
2 litigation. Any time we -- there is litigation.  
3 You know, it's prudent to not, not go into what we  
4 don't know about.

5 Q You referenced efforts by the Department  
6 of Ed to encourage work between schools and CSBs.  
7 Did the Department of Behavioral Health and  
8 Disabilities -- Developmental Disabilities, have a  
9 role in encouraging that work between CSBs and the  
10 schools?

11 A Yes. Yes. Their director of adolescent  
12 services oversees the Apex program, that provides  
13 therapists through BHDD and to schools, and I  
14 believe they are up to now about 700 schools. They  
15 have a therapist, and that's funded by the State.

16 And, yes, they're encouraging schools to  
17 take advantage of that program. Their challenged,  
18 too, by the workforce issues.

19 Q And who particularly at DBHDD is involved  
20 in this effort?

21 A Dante McKay is the person that I work most  
22 directly with, and I believe he's still over  
23 adolescent services at DBHDD.

24 Q Anybody else?

25 A Some of his staff members, but there's

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

48

1 been some changes in the staff, staffing there, so.

2 It was primarily with Dante.

3 Q And are there other state agencies that  
4 are involved in that effort?

5 A Not that I'm aware of.

6 Q DCH?

7 A I don't know what their role would be if  
8 they are.

9 Q You told me what the value of having CSBs  
10 and schools work together would be, in your view?

11 MR. BEDARD: Object to form.

12 A Well, the access to services, access to  
13 professional learning, continuity of care if a  
14 student is being seen by a CSB therapist but is also  
15 in school, it would be advantageous for the child to  
16 have those two institutions talking to each other  
17 for continuity of care for that child.

18 Q And the Department of Education was  
19 involved in encouraging this work?

20 A Just encouraging, yes.

21 Q Was that the limit of the department --

22 A That's all -- that's all we could do.

23 Q Why do you say that?

24 A Because we can't require the public  
25 school. We can't require the public school to offer

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
49

1 mental health services and we can't require the CSBs  
2 to provide mental health services.

3 I say "we." The Department of Education  
4 cannot do either one of those, but we can be the, we  
5 can be the facilitator. We can take a role of  
6 trying to encourage the relationship to exist  
7 between the two entities.

8 Q So I want to talk about school climate.  
9 Can you tell me what school climate is?

10 A It's the -- it's a combination of things.  
11 It's the safety and security and support, the  
12 character of the school.

13 Q What's the character of the school mean?

14 A That includes the facility being clean.  
15 It includes faculty and staff interacting with each  
16 other in a positive way, staff interacting with the  
17 students in a positive way.

18 It's like developing a small system of  
19 care, a small community at the school where people  
20 recognize each other, acknowledge each other, care  
21 for each other, engage with each other.

22 It's like workplace climate.

23 Q And what makes a positive versus a  
24 negative school climate? Can you give me examples  
25 of a positive school climate?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

50

1           A     All the things I just said. If you walk  
2 into a school and you see students talking to each  
3 other and staff talking to each other and you see  
4 students engaged with teachers, you see a lot of  
5 positive energy in the school. You see a school  
6 that's clean. You go to the bathroom, it's clean.  
7 You go to the cafeteria, it's clean.

8                     You see a lot of membership in club  
9 activities, you see a lot of parents, volunteers in  
10 the school, and parents participating and students  
11 participating in after-school activities.

12           Q     Can you paint a picture for me of what a  
13 negative school climate might look like?

14           A     The grass is not cut, debris in the  
15 school, on the school campus. The hallway is not  
16 clean, the bathroom is not clean.

17                     Very little interaction between the  
18 teachers and the students, very little interaction  
19 between the students themselves.

20                     A sense of no one really interacted much  
21 at all.

22           Q     How does that impact the students?

23                     MR. BEDARD: Object to form.

24           A     Well, they want somebody who cares and  
25 concern -- has concern about them and they want

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

51

1 somebody to interact with them and to know them and  
2 ask them how they're doing. We're talking about  
3 socialization. Somebody cares about them. They  
4 want to be at the school.

5 Q And if the bathroom is dirty, how does  
6 that make the students --

7 A Well, they won't go.

8 MR. BEDARD: Object to form.

9 A They won't go, and it just leaves an  
10 impression to the students that the adults don't  
11 care enough to keep the facility clean.

12 Just like in the workplace, if you work --  
13 if your office and the building you work in, you go  
14 to the bathroom and it's dirty, how do you feel? If  
15 you go to your office and nobody asks how you're  
16 doing after you've been out two or three days, how  
17 do you feel? It's the same as -- the school climate  
18 is the same as the workplace climate.

19 There's been a lot of research on both,  
20 how they impact employees and how they impact  
21 children.

22 Q And in the school context, what -- does  
23 PBIS relate to school climate?

24 A Yes.

25 Q And what is PBIS?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
52

1           A       Positive Behavioral Interventions and  
2       Supports.

3           Q       Can you describe sort of the basic  
4       structure and concept of PBIS?

5           A       Yes. It's developed in phases, where the  
6       introductory phase is to share with the faculty and  
7       staff the concept of and the importance of social  
8       connections, having structure within the school but  
9       having structure that's accompanied by positive  
10      interactions, and it's not just all negative.

11                 Also, the basic is talking to  
12      administrators as well as about the operation of the  
13      school, where discipline is administered fairly and  
14      equally, where interaction with the staff by the  
15      administrators is handled fairly and equally and  
16      with encouragement. And the facility must be clean.  
17      The facility has to be safe and secure.

18                 Then they phase in the training of the  
19      staff on how to recognize and employ methods to  
20      interact with each other and interact with staff,  
21      with students. Using processes like appreciative  
22      inquiry, find out what actually works when you're  
23      working with a child, even if it only works for 30  
24      seconds and there's something within that 30 seconds  
25      that allows you to more successfully engage with

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
53

1 that child eventually.

2 So the focus is on shifting to a positive  
3 approach. You know, it's not -- and it's based on  
4 research that's been endorsed by SAMHSA, and so it's  
5 not the only model for improving school climate but  
6 it's one that's researched based. So that's the one  
7 that the Department of Education supported, because  
8 it's research based.

9 Q Thank you.

10 What are your beliefs about the importance  
11 of school climate?

12 A I think it's critically important.

13 Q How so?

14 A Because it increases the likelihood of  
15 children having successful experience in school, and  
16 it's also -- the research shows a positive school  
17 climate is a protective factor for children, in that  
18 they feel socially connected and they feel safe and  
19 they feel secure. And children are like adults. If  
20 you like going to where you spend most of your day,  
21 then you'll have more successful outcomes.

22 If you like where you work, you're more  
23 likely to have a successful career. If you don't  
24 like where you work, you're more likely to go  
25 somewhere else. Well, the child can't go to

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

54

1 somewhere else. So it's incumbent upon us to make  
2 that school climate positive.

3 Q Did you have these same beliefs when you  
4 were working at the Georgia Department of Ed?

5 A Absolutely.

6 Q And did your beliefs on the subject change  
7 at all over time?

8 A No.

9 Q Is positive school climate important for  
10 every single student?

11 A Absolutely.

12 MR. BEDARD: Object to form.

13 Q Are there any categories of students that  
14 are excluded --

15 MR. BEDARD: Object to --

16 Q -- from that --

17 MS. LILL: Strike that.

18 BY MS. LILL:

19 Q Are there any categories of students for  
20 whom school climate is not important?

21 A No, I can't think of anybody.

22 Q Is there information or data that supports  
23 or informs your beliefs about the importance of  
24 school climate?

25 A There's a good body of research about

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
55

1 school climate, the importance of school climate.

2 You can look at the National School  
3 Climate website, and the U.S. Department of  
4 Education has a lot of information about that and  
5 they support improving school climate in schools.

6 Q What are the positive effects of good  
7 school climate?

8 A Improved attendance, improved academic  
9 outcomes, fewer out-of-school suspensions.

10 There's some showing even teacher  
11 retention is improved.

12 Q Does it improve mental health?

13 MR. BEDARD: Object to form.

14 A I don't know of any research specifically  
15 saying school climate improves mental health.  
16 There's some talking about it as a protective  
17 factor. So that if a child has some mental health  
18 issues, a positive school climate can actually  
19 protect them from that becoming a major issue in the  
20 school.

21 Q And what are the negative effects of a  
22 poor school climate on students?

23 MR. BEDARD: Object to form.

24 A It can -- there's some research showing  
25 that there would be an increase in confrontations,

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

56

1 negative interaction between students. For example,  
2 more bullying, higher teacher turnover rates, less  
3 involvement by parents in the schools, lower  
4 academic outcomes.

5 Q How does a poor school climate impact  
6 mental health of students?

7 A Well, there's no research on that that I'm  
8 aware of --

9 MR. BEDARD: Object to form.

10 A -- about the mental health. So I don't  
11 know really how to answer that question.

12 MS. LILL: I'm going to hand the court  
13 reporter what I would like to have marked as  
14 Plaintiff's Exhibit 96.

15 (WHEREUPON, Plaintiff's Exhibit-96 was  
16 marked for identification.)

17 MR. BEDARD: This is 96?

18 MS. LILL: 96.

19 BY MS. LILL:

20 Q So, for the record, this is an email chain  
21 between you, Dr. McGiboney, and Camille Pendley, on  
22 January 12th, 2020, and the front page is marked  
23 GA01624607.

24 This document has an attachment, which is  
25 also -- which you also have.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

57

1                   So in this document -- do you recognize  
2 this email?

3           A       Yes.

4           Q       Okay. So Ms. Pendley states that she's  
5 attaching the Voices report based on interviews with  
6 three school-based behavioral health providers here.  
7 She asked if you would give it a review.

8                   Do you see that?

9           A       Yes.

10          Q       And above you say: "Thank you for  
11 allowing me to review the SBBH report. It's  
12 extremely well done and informative. I did make  
13 some suggestions (and a few observations), as you  
14 will see in the attachment."

15                   Who is Ms. Pendley?

16          A       At that time she worked for the Georgia  
17 Voices -- Voices for Georgia's Children.

18          Q       And what is that organization?

19          A       It's an advocacy group for children.

20          Q       You agreed to provide comments on this  
21 draft document, correct?

22          A       I was asked to, yes.

23          Q       Okay. If you turn to Page 3 of that draft  
24 document, you will see there is a comment on the  
25 document and there is text that you appear to have

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
58

1 added.

2 A Right.

3 Q Do you see that?

4 A Yes.

5 Q The text says: "When schools have a  
6 positive school climate, school-based behavioral  
7 health services and other interventions are more  
8 likely to be effective."

9 A What column? You're on Page 3?

10 Q I'm sorry. Right where the -- yep, on  
11 Page 3.

12 A I see my comment in the margin.

13 Q Right. And the comment is attached to  
14 text that is italicized?

15 A I see. Okay.

16 Q That text says: "When schools have a  
17 positive school climate, school-based behavioral  
18 health services and other interventions are more  
19 likely to be effective."

20 Do you see that?

21 A Yes.

22 Q Does it appear that you added that text  
23 in?

24 A Yes, it appears that way.

25 Q Does this accurately reflect your beliefs

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
59

1 about the effects of school climate?

2 A Yes.

3 Q Why are behavioral health services and  
4 other interventions more likely to be effective when  
5 schools have a positive climate?

6 A Because they're more welcomed. It doesn't  
7 do a child a lot of good to go through a therapist  
8 at school and then go into a dirty hallway or go  
9 into a hallway and be bullied or pushed up against  
10 the locker room. I'm not sure the therapeutic  
11 service would help over a long term if they then  
12 faced a very negative school climate.

13 Q And on Page 21, if you could turn to Page  
14 21.

15 MR. BEDARD: Just for the record, this is  
16 the Page 21 of the Voices report, correct?

17 So Bates No. GA01624629?

18 MS. LILL: Yeah.

19 Q And, actually, I'm sorry. If we could  
20 stick with three for a second. So GA01624611.

21 The comment that you attach to that text  
22 says that: "This addition is supported by Apex  
23 therapists and this conclusion is part of an article  
24 being published in the School Psychology Review  
25 Journal this spring."

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

60

1 A Yes.

2 Q Does that accurately reflect --

3 A Yes, I wrote that.

4 Q -- your understanding? Yes.

5 So it's your understanding that Apex  
6 therapists believe that when schools have a positive  
7 school climate, school-based behavioral health  
8 services and other interventions are more likely to  
9 be effective?

10 MR. BEDARD: Object to form.

11 A The article referenced there was an  
12 article that was -- research was from Georgia State  
13 University and they studied Apex and school climate,  
14 and the finding of the article was that Apex  
15 therapists can improve school climate. And that was  
16 based on more positive interaction, more positive  
17 outcomes, more availability, and the therapists  
18 working with staff members to better serve students.

19 Q Okay. If we can --

20 A And you will find out I was a co-author of  
21 that article, with others.

22 Q And what's the name of that article?

23 A I don't recall the exact name, but it was  
24 School-Based Therapists and School Climate,  
25 something similar to that.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

61

1 Q And what were your -- what did you write  
2 about in that article?

3 A Just the school climate section,  
4 describing what school climate is.

5 Q Did you talk about the importance of  
6 school climate?

7 A Yes, that's in the article.

8 Q Okay. If you could turn to Page 21, which  
9 I will read the Bates number for that.

10 It's GA01624629.

11 Do you see a comment with your initials at  
12 the top of this page?

13 A Yes.

14 Q And do you see attached to that comment  
15 that there appears to be some italicized text that  
16 you added in?

17 A Yes.

18 Q So this sentence says: "All of this can  
19 help a student have their need met before it  
20 worsens, and contributes to a positive school  
21 climate, and you added: "While a positive school  
22 climate can create conditions that encourage  
23 students to engage with other students and staff  
24 members."

25 Do you see that?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
62

1 A Yes.

2 Q And the attached comment says: "GM" --  
3 your initials -- "I'm trying to make the point that  
4 sometimes a negative school climate can be an  
5 incubator for behavior issues."

6 Do you see that?

7 A Yes.

8 Q Do you believe that that is true?

9 A Yes.

10 Q Can you tell me more about what you meant  
11 with regard to positive school climate in this  
12 regard?

13 A What I mentioned earlier. If a student is  
14 having some issues, personal issues, whether it's  
15 long-term or short-term, that can be exacerbated by  
16 negative school climate.

17 Q So you believe that a negative school  
18 climate can be an incubator for negative behavior?

19 A Yes.

20 MR. BEDARD: Is that it with this one?

21 MS. LILL: I think so.

22 MR. BEDARD: If you're at a good stopping  
23 point, and we've been going for like an hour  
24 and 15.

25 MS. LILL: This is a good stopping point.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
63

1 So why don't we take a little break.

2 We can do about 10 minutes. Does that  
3 work?

4 MR. BEDARD: Works for me.

5 MS. LILL: Come back at 11 or so. Thank  
6 you.

7 THE VIDEOGRAPHER: We're Off the record at  
8 10:49 a.m.

9 (A recess was taken.)

10 THE VIDEOGRAPHER: We're back on the  
11 record at 11:10 a.m.

12 MS. LILL: I'm going to hand the court  
13 reporter what I would like marked as Exhibit  
14 97.

15 (WHEREUPON, Plaintiff's Exhibit-97 was  
16 marked for identification.)

17 BY MS. LILL:

18 Q Dr. McGiboney, do you recognize this  
19 email?

20 A Dated December 2018?

21 Q Yes.

22 A Yes.

23 Q So this is an email dated December 8,  
24 2018. The Bates-stamp is GA01603055, and the  
25 subject is "Children's Mental and Adult Outcomes."

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

64

1 And it appears that you're sending this  
2 email to somebody named Kevin?

3 A Yes.

4 Q Do you see that?

5 A Yes.

6 Q Do you know who Kevin?

7 A Is Kevin Tanner.

8 Q And who is Kevin Tanner?

9 A At that time, he was a state  
10 representative.

11 Q And you say in this email: "I cannot  
12 adequately express my excitement about the creation  
13 of a Mental Health Reform Commission modeled after  
14 the Criminal Justice Reform Commission."

15 Do you see that?

16 A Yes.

17 Q You say: "It is one of the most, if not  
18 the most, needed work the State of Georgia can do to  
19 help our children and adults."

20 A Yes.

21 Q And then you go on to say: "You probably  
22 have most of the data I've included in the  
23 attachment, but I wanted to make sure you had  
24 statistics about youth."

25 Do you see that?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

65

1 A Yes.

2 MS. LILL: Did I hand someone a document  
3 with highlighting?

4 A I don't see any highlights on this one --  
5 oh, yes.

6 Q I'm going to trade you. It's the same  
7 document. Apologies.

8 Which is marked GA01603058.

9 A Yes.

10 Q Page 3 of this document.

11 A Yes.

12 Q First of all, I should ask, did you  
13 prepare this time?

14 A Yes.

15 Q It's entitled "Children's Mental Health  
16 and Adult Outcomes."

17 Do you recall when you prepared it?

18 A I don't recall the exact date, no.

19 Q Do you have an estimate?

20 A Within the last four years.

21 Q And do you recall for what purpose you  
22 prepared this?

23 A This was prepared for hearings in the  
24 House of Representatives, state committees on mental  
25 health, and I was asked by the chairman of those

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
66

1 committees to do research on mental health as it  
2 related to, as much as I could, to schools.

3 Q Okay.

4 A And at that time Kevin Tanner was chairman  
5 of one of those state committees. At that time, it  
6 was during that -- there were several study  
7 committees between 2013 and 2019, different titles  
8 in the house and senate, that addressed mental  
9 health. Not just children's mental health but  
10 mental health.

11 So they asked me to do some research on  
12 that related to children's mental health.

13 Q Okay. Did you prepare this document to  
14 advocate for children's mental health in schools in  
15 Georgia?

16 A It's research on mental health.

17 MR. BEDARD: If we can pause for a second,  
18 I just saw something come across. I think  
19 there isn't any sound on the Zoom.

20 (Discussion ensued off the record.)

21 BY MS. LILL:

22 Q So on Page 3 of this document, the third  
23 bullet point from the top, it says: "An unstable/  
24 unhealthy, non-supportive, non-responsive school  
25 climate can exacerbate the conditions of students

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

67

1 with mental health problems."

2 Do you see that?

3 A Yes.

4 Q Did you believe this statement to be  
5 accurate when you wrote it?

6 A It comes from the research I footnoted.

7 Q Do you believe the statement to be  
8 accurate?

9 A Based on the research that was done by the  
10 researcher who wrote it.

11 Q Do you believe it is still accurate today?

12 MR. BEDARD: Object to form.

13 A Yes. I haven't seen any research that  
14 contradicts it.

15 Q And the next bullet point, which is the  
16 fourth bullet point down, says: "Interventions to  
17 improve school climate promotes the emotional and  
18 behavioral well-being of children and adolescents,  
19 particularly ones with mental or physical health  
20 problems."

21 Do you see that?

22 A Yes.

23 Q Did you believe this statement to be  
24 accurate when you wrote it?

25 A That's reflected in the research noted in

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
68

1 the footnote.

2 Q Do you believe there has been any changes  
3 to the research to make this statement untrue?

4 A I haven't -- I'm not aware of any.

5 Q The third bullet point from the bottom,  
6 you reference a study that, quote "found that over  
7 time the mental health status the students worsened  
8 if the conditions of the school climate did not  
9 improve."

10 A Yes.

11 Q Did you believe that statement to be  
12 accurate when you wrote it?

13 A It's a reflection of the research I noted  
14 in the footnote.

15 Q Do you know of any research that has  
16 changed?

17 A I'm not aware of any.

18 Q So you believe that statement is still  
19 supported by research today?

20 A To my knowledge, yes.

21 MS. LILL: I am going to introduce  
22 electronically Exhibit 98 for the plaintiffs.

23 It is entitled "The Psychology of School  
24 Climate 2nd Edition."

25 Can you all see that?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

69

1 MR. BEDARD: I can see it.

2 For my benefit, Victoria, is this a  
3 document that's been produced in the case?

4 MS. LILL: Yes. I was about to read the  
5 Bates number. It's marked GA01573636 is the  
6 first page of this document.

7 BY MS. LILL:

8 Q Dr. McGiboney, do you recognize this  
9 document?

10 A Yes.

11 Q And what is it?

12 A It looks like, it looks like a draft of a  
13 document.

14 Q Do you believe this to be the final?

15 A I can't tell from what I'm looking at.

16 Q Did you write this?

17 A Yes. The second edition was not  
18 published, though.

19 Q Why was the second edition not published?

20 A I don't -- I don't recall.

21 Q Were there significant changes that were  
22 made between the first edition and the second  
23 edition?

24 A Additional research. Typically, when you  
25 have a second edition, it's for the most part the

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

70

1 same but there's more research added.

2 Q So the research has been updated?

3 A Yes, but it wasn't updated enough to  
4 publish.

5 Q Bear with me. You don't write short  
6 books.

7 I'm on Page 58, which is GA01573693.

8 And you'll see here, Dr. McGiboney, that  
9 it says "Chapter Three: School Climate, Social  
10 Emotional Learning, and Mental Health Summary  
11 Points."

12 Do you see that?

13 A Yes.

14 Q Can you just describe what you're doing  
15 there?

16 A Summarization of the chapter, the most  
17 salient points of the chapter, because it was  
18 intended to be a textbook.

19 Q Okay. And so I want to direct you to this  
20 one where my cursor is over. It says, "Declines in  
21 school climate quality are associated with declines  
22 in psychological and behavioral adjustment with  
23 adolescent students."

24 Do you see that?

25 A Yes.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

71

1 Q Did you believe that to be true when you  
2 wrote it?

3 A That's similar to the footnote that you  
4 referenced earlier in the document, that I created  
5 for Kevin Tanner. So yes.

6 Q And do you believe it to be accurate  
7 today?

8 A Yes.

9 Q And the next bullet point here says:  
10 "Interventions to improve school climate may promote  
11 the emotional and behavioral well-being of children  
12 and adolescents, particularly ones with social  
13 emotional and health issues."

14 Do you see that?

15 A Yes.

16 Q And did you believe that to be accurate  
17 when you wrote it?

18 A Yes, based on the research.

19 Q Do you believe it to be accurate today?

20 A I'm not aware of any contradicting  
21 research.

22 Q Thank you.

23 Moving down to this bullet point here, it  
24 says: "The social environment, the interactions  
25 between and among students, is a component of

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

72

1 climate."

2 A Yes, I see that.

3 Q Do you believe that to be accurate?

4 A Yes. Based on the research.

5 Q And what do you mean when you say the  
6 interactions between and among students?

7 A Whether they talk to each other in a  
8 positive way, whether they get along with each  
9 other, whether they engage with each other in  
10 meaningful social -- socially responsible ways.

11 Q Moving down to the very last bullet point,  
12 it says: "School climate can further destabilize  
13 children who already have social emotional issues  
14 and may even compromise external efforts to address  
15 children's mental health status, and the negative  
16 effects can be long term."

17 Did you believe that to be true when you  
18 wrote it?

19 A Yes. That's again based on the research  
20 that's referenced in the other document.

21 Q And do you believe that to be true today?

22 A I'm not aware of any research that  
23 contradicts that.

24 Q And can you explain what this bullet point  
25 means?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

73

1 A Which one?

2 Q This last one.

3 A The last one.

4 Q How can school climate further destabilize  
5 children who already have social/emotional issues?

6 A Well, if they have a negative school  
7 climate, where, say, bullying is an issue, and the  
8 child already has some emotional issues and is very  
9 emotionally vulnerable, being exposed to negative  
10 interactions repeatedly, day in and day out, by  
11 other students would have a negative impact.

12 A negative school climate is not -- we're  
13 not talking about a bad day at the school. We're  
14 talking about negative school climate that exists  
15 for a long period of time. So that encounter -- the  
16 negative encounter is when negative socialization,  
17 negative social interactions. We're talking about  
18 over a long period of time, the impact it could have  
19 on children.

20 Q Can you tell me what your understanding of  
21 the GNETS program is?

22 MR. BEDARD: Object to form.

23 Object to form. You can answer.

24 A Well, it's embedded in the title. It's a  
25 network of education and therapeutic services for

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

74

1 children who have been placed in the program by an  
2 IEP process after an evaluation and observations.

3 Q How is the program structured?

4 MR. BEDARD: Object to form.

5 A How it's structured?

6 As far as I know, it's set up like another  
7 school, in that you have a principal or a director  
8 who has administrative staff, who has a teaching  
9 staff, who has a custodial staff, and they also  
10 ensure that the students have transportation to the  
11 program.

12 If that's what you mean by the form of the  
13 program, as far as I know.

14 Q Do you understand there to be regional  
15 programs?

16 A Yes. There are GNETS programs that serve  
17 more than one school district.

18 Q Do you know how many regional programs  
19 there are?

20 A I don't recall.

21 Q What is the purpose of the GNETS program?

22 A To serve children who are placed there by  
23 the IEP, just like a child is placed for any other  
24 service by the IEP.

25 Q And what is the service to be provided?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

75

1           A       A combination of education, therapeutic  
2 services.

3           Q       What is the goal of the program, as you  
4 understand it?

5           A       Well, the goal of an IEP, which is the  
6 mechanism, the controlling mechanism for placement  
7 of a child into special education programs,  
8 regardless of what that program is, the ultimate  
9 goal is for the child to make enough improvement to  
10 not need those interventions if possible.

11                   The goal of IEP should be to meet the  
12 needs of the child, that the IEP committee agrees  
13 these, these -- this is the list of needs for the  
14 child and the IEP should address those needs.

15           Q       Are there any other goals of the GNETS  
16 program?

17                   MR. BEDARD: Object to form.

18           A       Any other schools?

19           Q       Are there any other goals?

20           A       Goals? I'm sure there are.

21           Q       You're sure there are, but you don't know  
22 what they are?

23           A       I'm not sure what -- the goals in the IEP  
24 are going to be different. That's why it's called  
25 Individual Education Program. Each child is going

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

76

1 to have an individual goal.

2 So the goal of the GNETS program should be  
3 whatever is in the IEP as far as the goal for that  
4 child.

5 Q Was the GNETS program created to -- for a  
6 particular purpose?

7 MR. BEDARD: Object to form.

8 You can answer.

9 A For a particular purpose? I suppose it  
10 was, as I recall, was for children who had severe  
11 emotional or behavioral problems.

12 Q What is the target population for GNETS?

13 MR. BEDARD: Object to form.

14 A The students who have severe emotional or  
15 behavioral problems.

16 MS. LILL: I'm going to introduce  
17 Plaintiff's Exhibit 99, Which was produced to  
18 the United States as GA02485396.

19 (WHEREUPON, Plaintiff's Exhibit-99 was  
20 marked for identification.)

21 BY MS. LILL:

22 Q And this is -- Dr. McGiboney, this is on  
23 August 2020 email between you and Diane Durrence?

24 A Uh-hum. (Affirmative.)

25 Q The subject matter is GNETS.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

77

1 A Yes.

2 Q Who is -- do you recognize this email?

3 A Yes. Diane Durrence is the chief of  
4 school nursing for the Georgia Department of Public  
5 Health.

6 Q Okay. And you reference her question  
7 about the GNETS schools. Do you recall what her  
8 question was?

9 A Yes. This was during the pandemic. We  
10 work with the Department of Public Health to -- for  
11 schools to report cases of COVID to the Department  
12 of Public Health, and they created a program where  
13 they included a drop-down menu for schools so it  
14 would be easy for them to go in and find their  
15 school and report COVID.

16 So she was asking should GNETS be a part  
17 of that reporting system.

18 Q Okay. So you write, regarding the  
19 question about the GNETS schools: These "are  
20 psychological education centers that serve severely  
21 emotional disturbed students. Some are programs and  
22 some are schools but the students are there full  
23 day."

24 Does this -- do you see that?

25 A Yes.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

78

1 Q Does this accurately reflect your  
2 understanding of the GNETS program?

3 A Yes.

4 Q What do you mean when you say summer  
5 programs and summer schools?

6 A Because it's my understanding that some of  
7 the programs for severely emotionally disturbed  
8 children are housed in school settings, in  
9 traditional school settings.

10 There's like a satellite -- they used to  
11 call it satellite programs of GNETS, where they make  
12 the transition from GNETS back to the school. And  
13 there's a satellite transition program. So that's  
14 what I was referencing.

15 Q And you say "but the students are there  
16 full day?"

17 A That was to my knowledge.

18 Q When did you first become aware of GNETS?

19 A When I worked in the DeKalb County School  
20 System when they were called Psycho Educational  
21 Centers.

22 Q Have you conducted facility visits to  
23 GNETS?

24 A Yes.

25 Q When?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

79

1           A       As I recall, it was 2008. Possibly into  
2 2009.

3           Q       Annually?

4           A       No.

5           Q       How frequently?

6           A       Once.

7           Q       And how many facility visits did you do at  
8 that time?

9           A       I was asked by the director of the GNETS  
10 program at that time to visit our -- I think it was  
11 eight facilities.

12          Q       Who is the GNETS director at that time?

13          A       Ginny O'Connell. G-I-N-N-Y.

14          Q       She was the State director of the program?

15          A       Yes.

16          Q       And why did she ask you to visit eight  
17 facilities?

18          A       She never said -- I was relatively new at  
19 the Department of Education and she knew I had a  
20 background in school safety, and she asked me -- she  
21 said, Dr. McGiboney, I'd like for you to visit these  
22 GNETS. It was either eight or 10. I think it was  
23 eight.

24                   And as I recall, she just said I want you  
25 to visit and let me know what you think. She didn't

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
80

1 say why or that she had any concerns. She just said  
2 that I want you to visit these eight -- I think it  
3 was eight.

4 Q Do you remember which facilities you  
5 visited?

6 A I don't remember all of them. I remember  
7 one in Richmond County School System, one in Hall  
8 County, one in Baldwin County, Bibb County,  
9 Carrollton County -- it was either Carroll City or  
10 Carrollton County. Carroll County or Carrollton  
11 City. I can't remember which one it was.

12 And I don't recall the others.

13 Q Were these standalone centers?

14 A Standalone buildings, yes.

15 Q You said Ms. O'Connell asked you to let  
16 you know what -- let her know what you thought?

17 A Yes.

18 Q And what did you think?

19 A You want me to go through each one and  
20 tell you what I thought?

21 Q Yes. Let's start with -- let's start with  
22 Richmond. You said that first.

23 Do you recall whether that was Sand Hills?

24 A Sand Hills.

25 Q So it was the center at Sand Hills?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
81

1 A Yes.

2 Q And what do you recall about your visit to  
3 the Sand Hills GNETS program?

4 A Well, we reported to Ginny O'Connell and  
5 to the superintendent of Richmond County School  
6 System that the building was subpar. Subpar. That  
7 it had issues, such as water damage, ceiling tiles  
8 hanging down that had not been replaced, restroom  
9 facilities that were not up to par, fencing around  
10 the building that -- chain-link fence around the  
11 building that would impede emergency exit.

12 And other issues with the building. It  
13 was an old building that just needed to be  
14 renovated, or the program needed to be moved.

15 Q Anything else that you observed in that  
16 visit?

17 A The playground was -- access to the  
18 playground was impeded by a tree that had fallen,  
19 and by the condition of the tree it appeared to have  
20 been there a long time. So the children did not  
21 have access to the playground.

22 Q Was there anything else that you can  
23 recall about that visit?

24 A Not specifically.

25 Q Do you recall approximately how many

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
82

1 students were enrolled at that facility?

2 A I don't remember.

3 Q So you mentioned then Hall -- a facility  
4 in Hall County next?

5 A Yes. I believe that was Pioneer RESA.

6 Q Pioneer RESA. Thank you.

7 A Pioneer.

8 Q Tell me what you remember about your visit  
9 to the facility?

10 A A subpar facility. There was an old  
11 facility, very old, and we were concerned about  
12 emergency exits, and we were concerned about the  
13 size of the classrooms. We were concerned about the  
14 bathroom facilities.

15 There was a building that was also  
16 occupied by -- I believe it was DFCS. There was  
17 another state or local agency in the building, and  
18 they had closed access to that part of the building,  
19 which in an emergency would have only left one exit  
20 point. So we were concerned about them working with  
21 that government agency to make sure there was  
22 emergency exit access.

23 There were some maintenance issues. There  
24 was peeling paint. There was a playground, but the  
25 students did not have access to the playground

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
83

1 because it was owned by that other state agency or  
2 local agency. I don't recall if it was state or  
3 local government. And they had refused to allow the  
4 GNETS students to have access to the playground.

5 Q Do you recall anything else about that  
6 facility?

7 A The cafeteria or access to the food  
8 service area was small.

9 Q When you say size of concerns, you said  
10 you had concerns about size of classrooms?

11 A Yes.

12 Q What did you mean by that?

13 A They were small. The desks that were in  
14 there were too close to the walls, and it just was  
15 crowded conditions in the classroom.

16 Q Do you recall approximately how many  
17 students were in attendance there?

18 A I don't recall any of the numbers in the  
19 GNETS visits. It wasn't a large number of students,  
20 I do know that.

21 Q When you visited these facilities, did you  
22 do any assessment of the mental health or  
23 therapeutic supports?

24 A No.

25 Q Is it fair to say it was just a facility

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

84

1 assessment?

2 A Yes.

3 Q So moving to --

4 A I do remember there was one near Valdosta.  
5 I think it was Lowndes County we also visited. I  
6 think it was Lowndes County.

7 I'm sorry I interrupted you.

8 Q Yes, and I promised our court reporter  
9 that we would not interrupt one another. So we'll  
10 work harder on that.

11 A I'm sorry.

12 Q It's okay. I do it, too, sometimes.

13 So can I ask you if anyone accompanied you  
14 on these visits?

15 A Yes.

16 Q And who --

17 A Marilyn Watson and Jeff Hodges.

18 Q Marilyn Watson?

19 A Marilyn Watson and Jeff Hodges. Marilyn  
20 was the program manager for Safe and Drug-Free  
21 Schools, and Jeff was the specialist for Safe and  
22 Drug-Free Schools.

23 Q Moving to Baldwin County, do you recall  
24 whether that was the Oconee GNETS?

25 A Yes, I believe it was.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

85

1 Q So it was, it was a standalone building?

2 A Yes.

3 Q And can you tell me about what you saw?

4 A It was an older elementary school  
5 building. Again, it was some maintenance issues  
6 because the building was old. Not a lot of concerns  
7 there. It was just more of maintenance issues than  
8 anything else, as I recall. I don't remember any  
9 specific, specific concerns we had there.

10 Q And the facility that you visited in Bibb  
11 County, was that the Elam --

12 A Yes.

13 Q -- Alexander GNETS program?

14 And that was also a standalone building?

15 A Yes.

16 Q And what were your observations about that  
17 building?

18 A It was actually a very -- it was a very  
19 old building, very old building. But actually it  
20 was very well-maintained to be so old, the  
21 maintenance. In fact, we commended the maintenance  
22 team because the building was in really good shape  
23 to be so old as far as maintenance, but it still had  
24 heating issues and air-conditioning issues. We were  
25 concerned particularly about the heating issues.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

86

1 The gas heaters were actually suspended from the  
2 ceiling, which we were concerned about that.

3 There was -- the lunchroom facility was  
4 subpar, and the size of it, the kitchen equipment  
5 was very old and needed to be updated, and there was  
6 -- frequently they had problems with some of the  
7 kitchen equipment in preparing food. So sometimes  
8 they had to satellite food in because they had  
9 difficulty preparing the food, as I recall.

10 Q Is that a concern?

11 A Well, yes.

12 MR. BEDARD: Object to the form.

13 A I mean you -- you know, ideally you want  
14 to have -- you don't have to have warm or hot food  
15 every day but you do want to have that periodically  
16 for children, at least have access to a healthy  
17 menu.

18 And they did the best they could and were  
19 providing meals, but there was sometimes a  
20 logistical problem for them because of the condition  
21 of the building. So sometimes lunch was not --  
22 sometimes lunch was delayed, for example.

23 So it wasn't an egregious problem but it  
24 was something they would correct.

25 Q Anything else that you remember about your

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

87

1 visit to the Elam Alexander GNETS program?

2 A Not that I recall.

3 Q Do you recall anything about a playground  
4 there?

5 A I was trying to remember the playground.  
6 I don't remember any issues with the playground. I  
7 don't remember there being any issues there.

8 Q Okay. Moving to Carrollton City, or  
9 County, you don't recall the name of that GNETS  
10 program?

11 A No. I think -- actually, I had trouble  
12 finding it. I think it's in the -- I don't know if  
13 it's -- it's whatever program serves Carroll County  
14 and Carrollton City School District. I'm not sure  
15 which -- I don't recall the name of it.

16 Q And what do you recall about your visit to  
17 the Carrollton County or City GNETS?

18 A Again, it was a very old building but it  
19 also was well maintained.

20 I don't recall any physical issues. We  
21 were concerned about emergency exit through one end  
22 of the building. They had temporarily stored  
23 equipment there, so we asked them to have the  
24 hallways clear, but that was more of a practice than  
25 a facility issue.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

88

1 Again, it was just an old building they  
2 were having trouble maintaining.

3 Lighting was an issue in a couple of the  
4 parts of the building. And they were working on  
5 trying to address that.

6 They had limited playground access.

7 Q Why do you say that?

8 A Well, where the building was located, it  
9 just didn't have access to a playground that was  
10 readily and easily accessible.

11 Q What was --

12 A You had to go around -- if I recall, you  
13 had to go around the building to get to the  
14 playground. And I don't recall -- I can't remember  
15 much about the playground itself, since that was 14  
16 years ago.

17 Q And was -- do you recall whether the  
18 Carrollton GNETS was referred to as Burwell?

19 A I can't remember. I'm sorry.

20 Q That's okay.

21 Is there anything else you remember about  
22 the Carrollton facility?

23 A Yes. We were concerned about the location  
24 of the building.

25 Q Tell me about that.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

89

1 A It was next to a cemetery.

2 Q Tell me why that's a concern for you.

3 A Well, if you look out the front windows of  
4 all the classrooms in the front of the building, you  
5 see a cemetery. We just didn't think that was  
6 conducive for students to be in that position where  
7 they could see a cemetery and grave markers every  
8 day.

9 Q Did you feel that created a negative  
10 school climate?

11 A That was our -- that was our opinion, yes.

12 Q Was there anything else about the  
13 Carrollton facility that you recall?

14 A No.

15 Q You mentioned the -- that you also visited  
16 the Valdosta site?

17 A I can't remember. It was Lowndes County  
18 or Valdosta.

19 Q And that was also a standalone building?

20 A Yes.

21 Q And what do you recall about that  
22 facility?

23 A The building was in actually very good  
24 shape. I don't recall it being -- it was an old  
25 building but it wasn't as old as some of the others.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

90

1 It was very well-maintained.

2 Q Anything else you recall?

3 A They had several seclusion rooms.

4 Q Were those in use?

5 A I'm sorry?

6 Q Were those in use?

7 A Yes.

8 Q Did you observe those being used?

9 A No, not while we were there.

10 Q Can you describe how you understand the  
11 room to have been used?

12 A They told us they were used when students  
13 were out of control, and they put them in the  
14 seclusion room to give them time to safely calm  
15 down. That's what we were told.

16 Q And what did the room look like?

17 A Very small. I don't know the footage.

18 As I recall, a panel door so staff could  
19 see the students, and nothing in the room.

20 Of course, it was lighted. That's about  
21 all I remember about it.

22 Q What did you think about the seclusion  
23 rooms?

24 A We discouraged the use of it.

25 Q Did you tell that to the program?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

91

1 A Yes.

2 Q And what did they say in response?

3 A We just told them -- I told the program  
4 manager, Ginny O'Connell, and I told the director of  
5 that program there at GNETS that we don't think  
6 that's a good idea to use the seclusion rooms.

7 Q How did you communicate this to the  
8 director?

9 A At the center or the Department of  
10 Education?

11 Q Well, first starting at the center. How  
12 was the feedback delivered to the --

13 A Each time we went to a center -- and keep  
14 in mind, too, I visited several more traditional  
15 schools to do safety assessments as well, not just  
16 GNETS.

17 Each time we would meet with the  
18 administrative staff when we arrived, and then we'd  
19 do the walk-through, and then at the end of the  
20 walk-through we would sit and debrief. And it was  
21 during the debriefing that I told the director that  
22 we didn't think it was a good idea to use the  
23 seclusion rooms.

24 Q Is there anything else that you recall  
25 about the Valdosta facility?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
92

1 A No.

2 Q Did you see seclusion rooms being used in  
3 the other facilities that you visited?

4 A All of them, as I recall, had seclusion  
5 rooms, but as best I can remember, the director said  
6 they no longer used them.

7 In fact, some of them, they were using  
8 them for storage rooms.

9 Q Did you deliver feedback by the facilities  
10 to the GNETS directors in person after each visit?

11 A Yes.

12 Q How did you relay your observations about  
13 your -- about these facility visits to the Georgia  
14 Department of Education?

15 A In writing. And I talked to Ms.  
16 O'Connell.

17 Q Was there a written report?

18 A Yes.

19 Q And when did you write that,  
20 approximately?

21 A Typically, when we do a safety assessment,  
22 it's written within three months after the visit.

23 Q Why do you discourage these seclusion  
24 rooms?

25 A Because there are other ways to manage

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

93

1 behavior.

2 Q And what are those?

3 A Well, there's training that staff can  
4 receive on how to manage students, and CPI training,  
5 Crisis Prevention Intervention training, training  
6 staff on how to deescalate verbally and even  
7 training on deescalate physically.

8 Q Would you say those are better  
9 alternatives to using the seclusion room?

10 A My opinion, yes.

11 Q And what is that opinion based on?

12 A I haven't seen any evidence that the  
13 seclusion room has any long-term benefits in  
14 correcting the behavior.

15 Q So after you, after you delivered this  
16 feedback to the GNETS directors in person and after  
17 you drafted this report, what actions were taken to  
18 improve --

19 A I'll tell you the ones I know about.

20 Q Let me finish. I just want to finish the  
21 question so we're not talking over one another.

22 A I'm sorry.

23 Q So what actions were taken to improve the  
24 subpar conditions that you described in the report?

25 A Well, we'll take them one at a time.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

94

1 Hall County, they closed the facility and  
2 moved the program to a better facility, which was a  
3 middle -- a small middle school that was -- they had  
4 built a new middle school and they were moving  
5 students out of the older middle school, and that's  
6 where they relocated the GNETS program to.

7 And the director was actually so proud of  
8 that, he called me and said I want you to come and  
9 see our new facility. So they moved to a new  
10 facility.

11 In Bibb County, the director of that GNETS  
12 program called me about three to six months later  
13 and thanked me because of the report, she said we're  
14 moving to a new facility.

15 Similar to Hall County, there was an  
16 elementary school that was -- the population had  
17 outgrown the elementary school and they were  
18 building a new elementary school. So they were  
19 going to repurpose the elementary school to house  
20 the GNETS program at Elam. And she asked me to come  
21 visit that, and I did. And it was a very nice  
22 facility.

23 Baldwin County, they did -- and I think  
24 there's been a change since even then. This was a  
25 long time ago. But they did some extensive

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

95

1 remodeling of the program -- of the facility. They  
2 corrected everything that we spotted.

3 And I forgot to mention at Baldwin they  
4 had a roof leakage problem, drainage problem, and  
5 they corrected that.

6 I think the program was eventually moved  
7 to another facility but I'm not certain about  
8 Baldwin, but I know they made some improvements  
9 there.

10 Carrollton, I don't know what -- I don't  
11 recall, they were going to move the program. That  
12 was the plan, to move the program. I don't recall  
13 if they did.

14 Richmond County, the superintendent called  
15 me personally and said he's going to close Sand Hill  
16 and move it to a -- at that time, they had built a  
17 new middle school and he said he was going to  
18 reserve a wing at the new middle school for the  
19 GNETS program. And whether it's still there, I'm  
20 not sure, but they closed Sand Hill facility and  
21 moved that program as well.

22 I can say this. I'm uncertain about  
23 Carrollton, but the other places, what we  
24 recommended they do, they did.

25 Q Why is it that it took your

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

96

1 recommendations for these changes to occur?

2 MR. BEDARD: Object to form.

3 A I can't really answer that.

4 Q What additional GNETS facility visits have  
5 you done since these, if any?

6 A I remember visiting the one in Atlanta  
7 Public School System. I don't recall the name of  
8 it. Again, that was a long time ago. It wasn't  
9 really a facility visit as much as it was -- I think  
10 it was professional learning. I think we did a -- I  
11 think we were doing some training on PBIS for the  
12 GNETS there, but it wasn't a facility visit.

13 I can't say exactly what the visit was  
14 now, but it was not for the facility.

15 Q Do you have any recollections about that  
16 visit?

17 A I don't remember too much about that  
18 facility. They were talking about at that time  
19 relocating that one also.

20 Q Why?

21 A I don't know. The facility was -- I  
22 didn't -- I don't recall it being in bad shape.

23 Q Have you visited any GNETS facility since  
24 then?

25 A I don't think so.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

97

1 Q Did you have any duties at the Department  
2 of Education with respect to GNETS?

3 A No.

4 Q So in all of your time at the Department  
5 of Education, you never had any duties with respect  
6 to GNETS?

7 A Indirectly. When I was associate  
8 superintendent for Support Service and Innovative --  
9 and Innovation a short period of time, that included  
10 special education. So GNETS was part of special  
11 education, but I don't recall working directly with  
12 any issues that came up regarding GNETS at that  
13 time.

14 Q Did you meet with anybody regarding GNETS  
15 regularly?

16 A Not that I recall, no.

17 Q Did you ever meet with anybody at DBHDD  
18 about GNETS?

19 A I don't think so.

20 Q Anybody at DCH?

21 A No.

22 Q Any non-state stakeholders?

23 A No, I don't -- I don't recall meeting with  
24 anyone else.

25 Q So in connection with the GNETS program,

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

98

1 have you ever coordinated directly with Nakeba  
2 Rahming?

3 A No -- well, I'll take that back.

4 We -- the department scheduled public  
5 hearings about GNETS, and the chief of staff, Matt  
6 Jones, asked me and our policy team -- which  
7 included me and the director of policy and our  
8 director of charter schools also helped with policy  
9 -- if we could go to some of those public hearings  
10 and help Nakeba facilitate the hearings.

11 We didn't do a presentation. We didn't  
12 ask questions. We didn't participate. We just  
13 helped her facilitate some of those hearings.

14 Q So was your involvement with Nakeba  
15 limited to the public hearings on the GNETS?

16 A That was pretty much -- that's all I  
17 recall doing. I don't -- she was on the cabinet, so  
18 we -- we talked during cabinet meetings and after  
19 and before, but I don't recall having any direct  
20 work with Nakeba about GNETS other than these public  
21 hearings.

22 Q And what did you understand her job title  
23 to be?

24 A To work directly with the GNETS programs.

25 Q In what way?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

99

1           A       I suppose to oversee and find out what  
2 they needed.

3           Q       And would she also provide GNETS programs  
4 with what they needed?

5                   MR. BEDARD: Object to form.

6           A       I don't really know what she did on a  
7 day-to-day basis. And I never saw her job  
8 description, so I don't, I don't know that I can  
9 fully answer that.

10          Q       How often would you say you discussed  
11 GNETS with Ms. Rahming?

12          A       Very seldom.

13          Q       In connection with GNETS, have you  
14 coordinated directly with Debbie Gay?

15          A       Coordinated? Well, we talked when she was  
16 at the Department of Education.

17          Q       Did you talk about GNETS with Ms. Gay?

18          A       If I recall -- I'm trying to recall the  
19 timing. I'm trying to remember if she was over  
20 Ginny O'Connell at that time or not, and I don't  
21 recall.

22                   I think Debbie Gay was at the department  
23 when Ginny O'Connell was there. So Ginny would have  
24 answered to Debbie Gay. I think that's the timing  
25 there.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
100

1 Q And what --

2 A I'm not sure when Nancy Hartsaul and Kim  
3 -- I can't remember her last name.

4 There were two other directors of Special  
5 Education, and I don't recall when they were over  
6 Ginny O'Connell, nor when Debbie Gay was.

7 Q What was Ms. Gay's job title?

8 A Director of Special Education.

9 Q Did she ever have a different job title  
10 when she was at the Department of Education?

11 A I'm sure she did. Titles change.

12 Q Do you know what Ms. Gay's role was with  
13 respect to the GNETS program, if any?

14 A It would have been whoever was over the  
15 GNETS program would have -- would be a direct report  
16 to her, as I recall.

17 Q So do you believe that Nakeba Rahming  
18 reported directly to Debbie Gay?

19 A I think Debbie Gay had left. I'm not sure  
20 when Debbie Gay retired, but I think, I think Nakeba  
21 came after Debbie Gay, and the department thought  
22 that it was -- that the GNETS was so important that  
23 it needed to have a person that had some experience  
24 and would be a direct report to the chief of staff.

25 So it's my understanding, and I may be

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

101

1 incorrect on this, I think Nakeba reported to the  
2 chief of staff.

3 Q And why did the department think GNETS was  
4 so important?

5 MR. BEDARD: Object to form.

6 A I'm not sure why she was hired for that  
7 specific role.

8 Q Did you coordinate with Ms. Gay at all  
9 with respect to the GNETS program?

10 A Not that I recall.

11 Q How often would you say you discussed  
12 GNETS with Ms. Gay, if at all?

13 A Seldom.

14 Q Have you coordinated directly with Vickie  
15 Cleveland in connection with the GNETS program?

16 A No.

17 Q Do you know what her job title was?

18 A No. She replaced, as I -- my  
19 understanding is she replaced Nakeba.

20 Q So what would her role be with respect to  
21 GNETS?

22 A Same as -- I thought the same as Nakeba,  
23 to help the GNETS programs, support the GNETS  
24 programs.

25 Q Did you ever coordinate with Vickie

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
102

1 Cleveland at all with respect to GNETS?

2 A Not that I recall.

3 Q Have you ever coordinated directly with  
4 Zelfhine Smith-Dixon in connection with GNETS?

5 A No. But we did, we did talk often.

6 At one time PBIS was one of her  
7 responsibilities, and when the Office of School  
8 Safety and Climate was developed, PBIS then went  
9 under me.

10 So Zelfhine and I talked a lot about  
11 school climate, talked a lot about the PBIS, and I  
12 did -- she invited me to do presentations for the  
13 Georgia Association of Special Education -- Special  
14 Educators, but I don't recall talking about GNETS.

15 Q What was her job title?

16 A Director of Special Education.

17 Q And do you understand her to have a role  
18 with respect to GNETS?

19 A In that job I'm sure she did but I'm not  
20 sure what her relationship was with Vickie  
21 Cleveland. As far as whether she was a direct  
22 report to Zelfhine or not, I don't know.

23 Q Do you recall ever speaking with Zelfhine  
24 about GNETS?

25 A I just don't recall that ever coming up.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
103

1 Q Did you ever coordinate directly with  
2 Clara Keith with respect to GNETS?

3 A No, I don't remember talking to Clara  
4 about GNETS.

5 Q And what -- do you know what Clara's job  
6 title was?

7 A No, I don't. When I first went to the  
8 Policy Division she was -- I replaced her. She was  
9 deputy superintendent of Policy, and I don't recall  
10 what her new title was. I don't recall what her new  
11 title was.

12 And then she retired, retired and came  
13 back, as I understand, working part-time.

14 Q And what was that role when she returned?

15 A I don't know. I didn't, I didn't work  
16 with her.

17 Q Do you believe Clara Keith worked on the  
18 GNETS program?

19 A I really don't know.

20 Q Have you ever coordinated with Shawn Owen  
21 with respect to the GNETS program?

22 A No. Not GNETS. I talked to Shawn about  
23 federal programs but not about GNETS.

24 Q And what is Shawn's job title?

25 A I don't know what her title is now. I

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

104

1 think she's deputy superintendent for Federal  
2 Programs.

3 Q Do you know whether she had a role with  
4 respect to GNETS?

5 A I don't know.

6 Q Are there any others at the Department of  
7 Education that you recall discussing GNETS with?

8 A I don't recall talking to anyone else.

9 Q Did you have any involvement with  
10 facilitating funding of the GNETS program?

11 A No.

12 Q Do you know whether the State GNETS  
13 funding appropriation is determined anew annually?

14 A I don't know.

15 MR. BEDARD: Object to form.

16 A I don't know. I don't have knowledge of  
17 the GNETS funding.

18 Q When you were deputy superintendent of  
19 Policy and External Affairs, did you deal with  
20 fiscal appropriations at all?

21 A No. Only in that -- well, I'll qualify  
22 that.

23 Only in that we were made aware of what  
24 funding would be available for public education,  
25 primarily through the QBE formula, the FTE counts.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
105

1 The QBE allocations to school systems and we tried  
2 to work the legislators on the public funding.

3 Q Do you have any sense of how much money is  
4 appropriated to GNETS annually, if any?

5 MR. BEDARD: Object to form.

6 A I don't know.

7 MS. LILL: I'm going to hand the court  
8 reporter Plaintiff's Exhibit 100, which was  
9 produced to the United States and is marked  
10 GA00572801.

11 (WHEREUPON, Plaintiff's Exhibit-100 was  
12 marked for identification.)

13 BY MS. LILL:

14 Q Dr. McGiboney, this is an email chain  
15 between you and a woman named Miriam Gudenrath.

16 Do you recognize this email?

17 A Yes.

18 Q It's dated -- the last email sent is dated  
19 6/26/2020, and the subject matter is Re: Fiscal  
20 Year 21 Budget.

21 So on the second page of this document,  
22 which is marked GA00572802, Miriam Gudenrath emails  
23 you noting that "GNETS took an almost 10 million  
24 dollar cut. Do you think this will impact some of  
25 the very small GNETS to the extent they have to

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
106

1 close up shop?"

2 Do you see that?

3 A Yes.

4 Q Who is Miriam Gudenrath?

5 A She's on the PBIS staff.

6 Q You respond: "I'm not certain. There is  
7 a major movement to place several GNETS students  
8 back in their home schools."

9 Do you see that?

10 A Yes.

11 Q Where did you learn that there is a major  
12 movement to move students back to their home  
13 schools?

14 A During those public hearings, that's what  
15 Nakeba said.

16 Q What did Nakeba say exactly?

17 A As I recall, they were -- "they" being the  
18 school systems that housed the GNETS -- they were  
19 reviewing IEPs to see -- to make sure that the GNETS  
20 was the appropriate placement.

21 Q Who was reviewing IEPs?

22 A Local level.

23 Q What prompted them to review?

24 A I don't know --

25 MR. BEDARD: Object to form.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
107

1 A I'm just recalling what she said during a  
2 public hearing.

3 Q How did this impact funding in the fiscal  
4 year '21?

5 A I don't know.

6 MR. BEDARD: Object to form.

7 Q Do you know how this information was  
8 transmitted to the legislature such that they would  
9 then lower the budget?

10 A Mimi -- as we call, Miriam -- Mimi, was  
11 referencing the report from the Georgia School Board  
12 Association, and I'm not sure how the Georgia School  
13 Board Association acquired their information.

14 Georgia School Board Association is an  
15 advocacy group but they do work closely with  
16 legislators.

17 Q So you say "GNETS and schools" in response  
18 to her question of a major movement by whom.

19 What specifically are you referring to  
20 there?

21 A That IEPs were being reviewed.

22 Q How did this review of IEPs lead you to  
23 believe there was a major movement?

24 A Just by somewhat Nakeba was saying to --  
25 in the public hearings, that there was due diligence

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
108

1 taking place about the IEPs, just to review those  
2 and to see if the GNETS was -- remained the most  
3 appropriate placement.

4 Q Did you think that was a good idea?

5 A It's always a good idea to review IEPs, on  
6 an annual basis. Or if there's a change in the  
7 child's behavior, it's a good idea to keep the IEPs  
8 updated.

9 Q Do you know anything about the GNETS  
10 funding process?

11 A Not really. Just it's a -- as I  
12 understand, it's a separate line item in the  
13 funding.

14 Q Do you know who initiates a proposal for  
15 funding?

16 A No. Typically, all funding comes from the  
17 -- it's my understanding funding really starts with  
18 the House of Representatives and the budget  
19 committee. But there's a lot of people involved in  
20 building the budget. It's a very -- the State  
21 budget is extremely complex.

22 Q Is the Governor's Office involved in  
23 funding?

24 A The Governor's Office would be involved in  
25 building the State budget, yes.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
109

1 Q Is the Georgia State Board of Education  
2 involved?

3 MR. BEDARD: Object to form.

4 A I don't think so. I don't think there's a  
5 role for the State Board of Education, unless it's  
6 in an advisory capacity.

7 Q And is there anybody at the Georgia  
8 Department of Education who's involved?

9 A The State school superintendent makes the  
10 report to the legislature every year about the needs  
11 of public education.

12 Q And who at the Department of Education, if  
13 anyone, supports the State school superintendent  
14 doing that?

15 A The chief financial officer.

16 Q Who is that?

17 A I'm not sure who it is now. I think it's  
18 Rusk Roam. I believe it's Rusk. I'm not sure now.

19 Q Are you aware of a bill that was recently  
20 under consideration in the Georgia legislature to  
21 reassign the funding for the GNETS program?

22 A I heard something about funding being  
23 reassigned.

24 Q And what do you know about that?

25 A Only what I read in one of the reports

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

110

1 from the Georgia School Board Association.

2 Q And what did it say?

3 A As I recall, the funding would be shifted  
4 from the current mechanism to then be put into the  
5 QBE formula.

6 Q Can you explain that?

7 A If there's a separate category for  
8 funding, it doesn't typically follow the standard  
9 funding for FTE, which is full-time equivalent  
10 students. And there's two FTE counts, one in  
11 October and one in March. And based on the number  
12 of students -- and the full-time equivalent is six  
13 class periods a day. Why they call it FTE is  
14 because some schools have seven class periods, some  
15 students have five. So the FTE is based on the six.

16 So that's why it's not exactly one student  
17 equals a certain amount of dollars. It's the FTE  
18 that equals a certain number of dollars.

19 So the FTE count, one in October and one  
20 in March, is what builds the budget for the school  
21 system, local school system for the next year based  
22 on the State funding.

23 If it's a separate category of funding,  
24 they don't base it on FTE because if they did, they  
25 wouldn't get enough money typically, because it's

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

111

1 based on the number of students, not based on need.

2 So if you have a school that has -- like a  
3 GNETS, where all the students have an IEP, they have  
4 more needs. So the idea was to fund them at a  
5 higher level based on their need and not just on the  
6 number.

7 Q That's what you understand the bill --

8 A The bill, as I understand, was to move it  
9 from that categorical funding to QBE funding.

10 Q And did you also understand that funding  
11 would be routed directly to LEAs?

12 A Yes.

13 Q And how is that different?

14 A All QBE funding is routed to local school  
15 systems.

16 Q And how does the GNETS program currently  
17 work?

18 MR. BEDARD: Object to form.

19 A It's specifically for GNETS.

20 Q So there is a line item of appropriated  
21 funds --

22 A Right.

23 Q -- directly from the State to the GNETS  
24 program?

25 A It's a categorical funding, the category

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

112

1 being GNETS.

2 Q What do you think the purpose of such a  
3 change would be?

4 MR. BEDARD: Object to form.

5 A I don't know.

6 Q Was this idea of routing funding of LEAs  
7 ever discussed while you were at the Department of  
8 Education?

9 A Not with me, no.

10 Q Do you know of others who discussed it?

11 A No.

12 Q Do you have any, with respect to that  
13 bill, do you have any opinion about the advisability  
14 of making such a change?

15 A In my opinion, it would reduce the amount  
16 of funding available for GNETS.

17 Q How so?

18 A Because it's based on essentially a  
19 headcount, and the GNETS don't have that many  
20 students, so they would lose a considerable amount  
21 of funding. If you just look at the funding, the  
22 difference in the categorical funding and the QBE  
23 funding, they would lose, in my opinion and the  
24 opinion of others, they would lose a significant  
25 amount of money.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

113

1 Q Who proposed this bill, do you know?

2 A I don't know.

3 Q So, in your opinion, such a shift would  
4 harm GNETS students?

5 A Certainly it would impact and limit the  
6 services that would be available to GNETS, in my  
7 opinion.

8 If you look at it just by the -- I can  
9 leave my opinion out of it and just look at it by  
10 the categorical funding. The numbers don't add up,  
11 that the funding would be the same because it's not  
12 categorical anymore.

13 Q Have you discussed this bill with others?

14 A The Georgia Association of Educational  
15 Leaders called me, and when word got out about the  
16 bill and wanted to know what I thought about  
17 essentially what you have asked about the funding,  
18 and wanted to know if I thought it would be a  
19 significant cut, and I said yes, if you just look at  
20 the funding formula, it would have to be a  
21 significant cut just based on the numbers.

22 Then Mimi asked me about it here in this  
23 correspondence here, and then I think a RESA  
24 director, I believe, called -- asked me the same  
25 question.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

114

1 Q A recent director of what?

2 A I don't recall which one called me.

3 Regional Education Service Agency. I'm  
4 sorry, I should have said that. Regional Education  
5 Service Agency.

6 Q So a RESA director?

7 A Yes. We call it RESA, R-E-S-A.

8 Called me about it, just to informally ask  
9 what I thought, and again the answer was I don't see  
10 how it could not cut because of the way the funding  
11 is formulated.

12 Q What is the Georgia Association of  
13 Educational Leaders?

14 A That's an advocacy group.

15 Q What do they advocate for?

16 A Public education.

17 It's an umbrella organization for the  
18 Georgia Association of High School Principals, the  
19 Georgia Association of Elementary School Principals,  
20 the Georgia Association of Middle School Principals,  
21 the Georgia Association of Special Educators.

22 I think that's all -- no, no. I'm sorry  
23 the Georgia School Superintendent's Association.

24 All those associations are under the  
25 umbrella of GAEL, G-A-E-L, Georgia Association of

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

115

1 Educational Leaders.

2 Q And this organization called you recently  
3 about this bill?

4 A Well --

5 MR. BEDARD: Object to form.

6 A -- during the session.

7 Q Did they express the concerns for the  
8 students in GNETS?

9 A They expressed concern about the funding  
10 and how it would impact GNETS.

11 Q Do you know what that organization's  
12 opinion of the GNETS program is?

13 MR. BEDARD: Object to form.

14 A I don't know what their official opinion  
15 is.

16 MS. LILL: I think we're going to take a  
17 break for lunch.

18 THE VIDEOGRAPHER: Off the record at 12:29  
19 p.m.

20 (A recess was taken.)

21 THE VIDEOGRAPHER: We're back on the  
22 record at 1:50 p.m.

23 BY MS. LILL:

24 Q Welcome back, Dr. McGiboney.

25 Have you had a nice lunch?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

116

1 A Yes. Thank you.

2 MS. LILL: I am going to hand the court  
3 reporter what we are going to mark as  
4 Plaintiff's Exhibit 101.

5 (WHEREUPON, Plaintiff's Exhibit-101 was  
6 marked for identification.)

7 BY MS. LILL:

8 Q This document was produced to the United  
9 States as GA00501979, and it is an email chain  
10 between you, Dr. McGiboney, and Sue Smith, from  
11 September of 2015.

12 Do you recognize this --

13 A Yes.

14 Q -- email chain?

15 Who is Sue Smith?

16 A She's the director for the Georgia Parent  
17 Support Network.

18 Q And do you interact with her regularly or  
19 did you interact with her regularly?

20 A Every Tuesday I participate either as a  
21 presenter or as a participant in their weekly  
22 meetings and have for about two years now,  
23 regularly. But I've known Sue Smith for probably 20  
24 years.

25 Q The very earliest email in this chain,

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

117

1 which is dated July 15, 2015, bears the Bates No.  
2 GA00501981. Timothy Pratt shares a summary of the  
3 DOJ's findings in its investigation of the GNETS  
4 program.

5 Do you see that?

6 A Yes.

7 Q So I want to -- in this document you share  
8 some opinions with Ms. Smith about the GNETS  
9 program.

10 Do you see that?

11 A Yes.

12 Q I want to walk through those opinions and  
13 ask you some questions about them.

14 A Okay.

15 Q So, first, in the July 17th, 2015 email  
16 you write: "We have excellent GNETS and we have  
17 some that need a lot of attention."

18 Do you see that?

19 A 17th?

20 Q It's at the very top.

21 A I see the 15th.

22 Q Oh.

23 A I see the --

24 Q July 17th, 2015. So at the very bottom?

25 A The first page says September 15th, and

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
118

1 the second page has July 16th and July 15th. Third  
2 page has July 15th.

3 Q If you look at the very bottom of the  
4 first page.

5 A Bottom of the first page.

6 Q At the very bottom, it says on July 17th,  
7 2015.

8 A Oh, the very bottom.

9 Q Yeah, and it says Sue, and it goes on to  
10 the next page.

11 A Okay. I'm with you.

12 Q So you say in this document: "From  
13 Garry's point of view, we have excellent GNETS and  
14 we have some that need a lot of attention."

15 Can you tell me which of the GNETS are  
16 excellent GNETS?

17 A The ones in -- in my opinion, the ones --  
18 there are two GNETS programs in DeKalb County, and I  
19 think they are well run, and I think they do very  
20 well.

21 Q And what are you basing that opinion off  
22 of?

23 A When I worked in the DeKalb County School  
24 System.

25 Q And I believe earlier in our discussion

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
119

1 today, when I asked you what level engagement you  
2 had with the GNETS program in DeKalb, you said it  
3 was minimal?

4 A It was minimal. But I heard good things  
5 about the GNETS program in DeKalb from parents and  
6 from others.

7 Q So is that secondhand information the  
8 basis for your assertion that there are -- that that  
9 program is an excellent GNETS program?

10 A Yes.

11 Q And what did you believe made it  
12 excellent?

13 A Well, from what I heard, parents were  
14 pleased with the program. They had very little  
15 staff turnover from what we -- from what I heard.

16 They were innovative. They were always  
17 looking for ways to improve the program.

18 You have to understand in the school  
19 district, it's like a small -- it's like a family.  
20 People talk. We share information, we hear  
21 information.

22 Q And this assessment of the DeKalb GNETS  
23 program, from what time period would you say it --

24 A Until I left in 2007.

25 Q So from 2007 to 2015, when you wrote this

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
120

1 email, had you been familiar with the DeKalb GNETS  
2 program or any changes made to it?

3 A No.

4 Q So in this document, when you refer to  
5 excellent GNETS, are there others aside from the  
6 DeKalb program that you are referring to?

7 A Well, the one I visited in Elam, a  
8 terrific staff. The facility had problems, and I've  
9 already outlined those, but the staff was excellent.

10 We met with the staff. They were  
11 enthusiastic about what they were doing. The  
12 director was completely dedicated what she was  
13 doing. She loved her job. She love the kids. The  
14 kids would hug her in the hallway.

15 You walk down the hallway and the class  
16 change, the kids are talking to each other, they're  
17 hugging the teachers. They're, you know,  
18 high-fiving everybody. It was just a very positive  
19 climate.

20 While the facility needed help and they  
21 did move it, you could tell it was a very good  
22 program.

23 The one in Baldwin County was very  
24 similar. The facility was not the best that I've  
25 ever seen, but a lot of interaction between

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

121

1 students. That's one thing you can't hide. You  
2 can't fake that. That's pretty natural. When you  
3 walk in the school, you see how the kids interact  
4 with each other, the staff interact with each other.

5 I always go into the cafeteria because  
6 that's where you really also get a good feel for the  
7 social determinants of the school, and it was very  
8 positive there.

9 Those two come to mind as being -- you  
10 walk out of the building and say, I wish they had a  
11 better facility, but you walk out with a smile  
12 because you know the kids are just being taken care  
13 of and they're happy and they want to be there.

14 And there were parents in the building,  
15 volunteers in the building, at both Baldwin and in  
16 Elam.

17 Q Do you recall whether the name -- do you  
18 recall the name of the director at Elam when you  
19 visited?

20 A I believe her last name is Wolf. I can't  
21 remember her first name. I should remember her  
22 first name because she works for the Georgia  
23 Positive Behavior Supports Association.

24 Q It wasn't Brook, was it?

25 A No. I'm sorry.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
122

1 Q Okay.

2 A I believe she's still there.

3 Q Okay. And in this same document you say  
4 "There are GNETS that need a lot of attention."

5 What are you basing that opinion on?

6 A That was in reference back to those ones  
7 that I visited years before.

8 Q Was that assertion solely based on the  
9 visits that you conducted back in 2007?

10 A Yes, because that's really the only thing  
11 I had to base it on. But I did -- and I had  
12 communicated to Sue that many of those facilities  
13 that I visited did make some corrections.

14 Q So since 2007, when you did those visits,  
15 have you reviewed data about the GNETS program?

16 A No.

17 Q So continuing in this same document, you  
18 say: "We have too many GNETS facilities that are  
19 not up to par."

20 What do you mean when you say "not up to  
21 par"?

22 A The facilities are -- the ones I visited  
23 were old facilities and the facilities were not up  
24 to standards that you would expect your child to  
25 attend.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
123

1 Q Did you believe them to be unsafe?

2 A I don't -- I can't say that I thought they  
3 were unsafe. We were concerned about, as I  
4 mentioned earlier, some of the ability to exit the  
5 buildings in an emergency, because you need to have  
6 obviously more than one exit that's readily  
7 accessible.

8 So in that regard we were concerned about  
9 evacuation capabilities. But as far as overall  
10 safety, I couldn't say they were unsafe.

11 Q You talked a little bit about ventilation  
12 concerns. Does that raise safety issues?

13 MR. BEDARD: Object to form.

14 A I don't recall saying ventilation. There  
15 were ceiling tiles that were hanging loose at Sand  
16 Hill, that I did mention the heating and  
17 air-conditioning in Elam.

18 Ventilation, I don't recall that being an  
19 issue per se, but obviously what I just said would  
20 impact or could impact ventilation.

21 Q And when you say that there are too many  
22 GNETS facilities that are not up to par, would that  
23 include lack of cleanliness?

24 A It would include those items that I listed  
25 concerns about. Emergency access, bathrooms being

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
124

1 kept up -- being kept clean, general maintenance.

2 Access to the playground.

3 Q And to the point about access to  
4 playgrounds, if a facility is lacking amenities that  
5 are available in general education settings, does  
6 that make them not up to par, in your opinion?

7 MR. BEDARD: Object to form.

8 Go ahead.

9 A It depends on how the facility is utilized  
10 because there are some schools, typical schools,  
11 that have playgrounds and they're seldom used, for  
12 whatever reason, an administrative decision. So  
13 it's not the quality of the playground; it's the use  
14 of the playground.

15 So in the GNETS, if they had access to a  
16 playground still, it would come down to how is it  
17 used. Is it utilized? How is it utilized? When is  
18 it used utilized?

19 There would be probably be some students  
20 like in a regular school setting where a playground  
21 is probably not the best environment for them to be  
22 in if they have behavior issues.

23 But we would want students to have access  
24 to an area where they can exercise. Whether it has  
25 playground equipment or not, that's a matter of

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

125

1 opinion. But as long as there's some area to  
2 exercise, run around and play, interact, maybe have  
3 games, supervised games.

4 That's what I'm talking about when I'm  
5 talking about a playground. Because you go to some  
6 playgrounds and kids -- some kids don't even play on  
7 the equipment. If they are a certain age, they're  
8 not interested in that, but they would like to  
9 participate in running around and playing, throwing  
10 the football, throwing baseball, kicking a soccer  
11 ball.

12 Q And are those activities important to  
13 school climate?

14 MR. BEDARD: Object to form.

15 A I think so.

16 Q Why?

17 A Exercise, the social interaction when  
18 they're together on the playground. And that  
19 benefits children. Benefits adults as well.

20 Q So returning to this -- returning to this  
21 document, you say: "There is a need for more  
22 Transition Programs in regular school settings that  
23 would reduce the number of students in GNETS  
24 facilities."

25 Do you see that?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
126

1 A Yes.

2 Q How would -- what kinds of transition  
3 programs?

4 A Satellite programs.

5 Q What is a -- what do you mean when you say  
6 satellite programs?

7 A Those are the programs that -- I assume  
8 they still exist. I don't know.

9 Satellite programs were the programs that  
10 were between a traditional classroom schedule and  
11 GNETS. It was a transition either to GNETS or  
12 transition back from GNETS.

13 Because it's difficult to go from GNETS  
14 program or any kind of program that's not, not in  
15 the regular high school or regular elementary school  
16 or middle school, where they just all of a sudden  
17 show up at another school.

18 It's difficult for kids transferring from  
19 a middle school to a high school, or elementary  
20 school to a middle school. So the transition  
21 program just helps them make that transition, or the  
22 satellite program helps them make that transition,  
23 in my opinion.

24 Q So you say: "Transition programs in  
25 regular school settings that would reduce the number

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
127

1 of students in GNETS facilities."

2 A The satellite programs typically are in a  
3 regular school facility.

4 Q And do you think it's -- in saying this,  
5 are you saying that you feel that students should be  
6 -- the number of students in GNETS facilities should  
7 be reduced?

8 MR. BEDARD: Object to form.

9 A If that's what the IEP asks for. If we  
10 had an increase in the number of satellite programs,  
11 perhaps when the IEP is reviewed each year a  
12 satellite program might be more appropriate.

13 Q So if there were more satellite programs  
14 available, you're saying that perhaps IEP teams  
15 would place students in those programs?

16 MR. BEDARD: Object to form.

17 A I can't say that's what would happen, but  
18 it would be worth exploring.

19 Q And why is it worth exploring?

20 MR. BEDARD: Object to form.

21 A Because, like I said earlier, IEP should  
22 be reviewed on a regular basis because children  
23 change, their needs change. They develop skills,  
24 they develop coping skills. They also develop other  
25 needs.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIAJune 08, 2022  
128

1           So that it may be the IEP should be  
2   changed and updated. That IEP might, might -- if  
3   updated on a regular basis or reviewed on a regular  
4   basis, it could be a different outcome, which one of  
5   those options might be the satellite program.

6           Q     Earlier when you said that facilities are  
7   not up to par for children, you know, for a school,  
8   what standard are you applying?

9           A     There's a -- when we went into those  
10   schools, like in the GNETS, like we went into every  
11   other school for a safety assessment, we had a  
12   checklist, and the checklist was developed over time  
13   from many, many resources, including fire codes and  
14   state codes and other codes.

15           So we'd go through and look at the  
16   checklist, and the checklist included things like  
17   air-conditioning, heating, maintenance, general  
18   maintenance, which includes bathrooms and emptying  
19   trash cans and everything else related to general  
20   maintenance. Painting, cleaning of the gutters,  
21   cleaning of the -- cutting the grass, trimming  
22   hedges, making sure there's no debris in the parking  
23   lots, making sure the playgrounds have no obstacles  
24   or hazards.

25           So it was based on a checklist of

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
129

1 standards and expectations and quotes.

2 Q Is that a checklist that's set by the  
3 Department of Education?

4 A It was.

5 Q Is it documented somewhere?

6 A It may still be on the website. There's a  
7 safe school plan on the DOE website, and the safe  
8 school plan includes a checklist.

9 Q Returning to this document here, you go on  
10 to say in this very same email: "With state funding  
11 cutbacks (remember that funding for GNETS is a line  
12 item each year) the amount of...therapeutic services  
13 in GNETS have been reduced."

14 What was the fiscal year funding cut to  
15 the GNETS programs that you were referring to here?

16 A I don't recall.

17 Q Do you recall approximately how much  
18 funding was cut?

19 A No. And that was, that was based on  
20 secondhand information.

21 Q What secondhand information?

22 A Coming from those who worked with the  
23 budgets.

24 Q Were you receiving that information in  
25 advance of the cuts?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

130

1 A No.

2 Q Do you know what therapeutic services, if  
3 any, were cut?

4 A No.

5 Q So you go on to say here that: "Georgia  
6 needs to tell the Department of Justice that we are  
7 committed to improving the facilities, committed to  
8 better identification of student needs, and  
9 reinstate mental health services."

10 Do you see that?

11 A Yes.

12 Q When you say "we," who are you referring  
13 to?

14 A State of Georgia, Department of Education.

15 Q You then say on the very first page of  
16 this email chain, in another email to Sue, that you,  
17 quote: "Recommend three things in this order: (1)  
18 an independent (maybe a team from OSEP) review of  
19 all the GNETS IEPs and let the independent reviews  
20 determine the appropriateness of the services; (2)  
21 suggest that the state restore all funds for therapy  
22 services; and (3) ask the state to review every  
23 GNETS to determine what building repairs and  
24 upgrades are necessary and then float a state  
25 building bond." In parenthesis: "We do state

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

131

1 building bonds all the time."

2 So I want to break -- do you see that?

3 A Yes.

4 Q I want to break these recommendations down  
5 and discuss them one by one.

6 Did you ever recommend to anyone employed  
7 by the State that an independent review of GNETS  
8 IEPs occur?

9 A No.

10 Q So you recommended -- you said this only  
11 to Ms. Smith?

12 A As I recall, yes.

13 Q Did you have questions in your mind about  
14 the appropriateness of placement for GNETS students?

15 A That's difficult to answer. I don't know  
16 that I had any particular concerns, other than it's  
17 not common to place a student in the GNETS program.  
18 So therefore it would be, in my opinion, appropriate  
19 to review those IEPs pretty often.

20 Q Did an independent review of GNETS IEPs  
21 ever happen, to your knowledge?

22 A I thought it did but I can't verify that  
23 it did.

24 Q When you refer to OSEP, are you referring  
25 to the Federal Department of Education?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
132

1           A       Yes. The Office of Special Education  
2 Programs.

3           Q       And how would your recommendation to Ms.  
4 Smith work in theory?

5           A       In theory, a team could -- a team of  
6 experts who have experience in developing and  
7 implementing IEPs could review IEPs to see what's in  
8 the IEPs, what the students' needs were, and if the  
9 recommendation of the IEP was an appropriate  
10 recommendation based on the knowledge they had of  
11 the student at that time.

12          Q       And why did you think it be important that  
13 an outside entity or individual be the person to  
14 review IEPs?

15          A       Just a different perspective from a  
16 different group of people that have different levels  
17 of expertise.

18          Q       And moving to the second recommendation,  
19 did you ever suggest that the State restore all  
20 funds for therapy services?

21          A       No.

22          Q       So this was just a recommendation that was  
23 a theoretical one to Ms. Smith?

24          A       Yes.

25          Q       And why did you not make this

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
133

1 recommendation to the state?

2 A I wasn't working with the GNETS program.

3 Q When you said this to Ms. Smith, were you  
4 specifically referring to therapy students -- to  
5 therapy services for students in GNETS?

6 A Yes.

7 Q Were you referring to therapy services in  
8 general education that would allow students to  
9 remain in general education versus going to GNETS?

10 A One and two would be related. The first  
11 recommendation and the second would impact the  
12 second one, or could impact the second one.

13 In other words, if the IEP is reviewed and  
14 services could be provided in a satellite program in  
15 a regular school setting with more therapeutic  
16 services, then that would be worth -- that would be  
17 a good reason to review the IEP.

18 Q And do you say that because more  
19 integrated settings are preferential?

20 A Well, the least restrictive environment is  
21 always preferential.

22 MR. BEDARD: Object to form on the last  
23 question.

24 Q Did restoration of funds for therapy ever  
25 happen?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

134

1 A I don't know.

2 Q Who would know?

3 A The Department of Education. Staff that  
4 works with the budget would know.

5 Q And as to the third recommendation, did  
6 you ask anyone employed by the State to review every  
7 GNETS to determine what building repairs and  
8 upgrades are necessary?

9 A No.

10 Q So this was also a recommendation that you  
11 made only to Ms. Smith?

12 A Well, I had, more generally speaking, not  
13 just GNETS, Mike Rowland, who handles facilities.

14 Each school district's five-year facility  
15 plan went to the State Board for approval, and the  
16 five-year facility plans includes all the facilities  
17 in a school system, including GNETS, even if it's  
18 being used by more than one school district.

19 So everything that went to the State Board  
20 had to come through Policy. So we would look at the  
21 five-year plans and sometimes those five-year plans  
22 would include a GNETS in the five-year plan, but we  
23 didn't specifically, as I recall, talk about the  
24 intricacies of each five-year plan, but they did  
25 come through Policy, and within those documents

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
135

1 there may have been facilities referred to that  
2 included GNETS.

3 Q But just to go back to my question, did  
4 you ever ask anyone employed by the State to review  
5 every GNETS to determine what building repairs and  
6 upgrades were necessary?

7 A No. I was not working with GNETS.

8 Q So this was sort of a theoretical --

9 A Yes.

10 Q -- suggestion that you made to Ms. Smith?

11 A Based on the visits that I had several  
12 years ago.

13 Q Did you have reason to believe that such a  
14 review would be necessary?

15 A Not based on specific information or  
16 complaints that I had.

17 Q To your knowledge, was such a review done?

18 A I don't know.

19 Q What is a state building bond,  
20 Dr. McGiboney?

21 A The State sets aside facility construction  
22 bonds for the construction of schools, that people  
23 buy the bonds. That's how they get the money to pay  
24 for the schools, and then there's interest on those  
25 bonds, and that's how the investors get their money

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
136

1 back. And the building bonds, the amount varies  
2 from year to year.

3 Q And did you ever recommend that the State  
4 float a building bond to improve GNETS?

5 A No. I was not working --

6 MR. BEDARD: Object to form.

7 A I was not working with GNETS.

8 Q At this time you were -- at the time when  
9 this email was sent, in September of 2015, you were  
10 deputy superintendent of Policy and External  
11 Affairs; is that correct?

12 A Yes.

13 Q So if there was a matter that involved --  
14 so, for example, this lawsuit, were you involved in  
15 crafting the Department's response to this lawsuit  
16 in that role?

17 A No.

18 MS. LILL: I'm going to hand the court  
19 reporter what I'd like to have marked as  
20 Plaintiff's Exhibit 102.

21 (WHEREUPON, Plaintiff's Exhibit-102 was  
22 marked for identification.)

23 BY MS. LILL:

24 Q So this is an email that was produced to  
25 the United States as GA00511814. The subject is

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
137

1 "GNETS Facility - Cedarwood Program."

2 Do you recognize this email?

3 A Yes.

4 Q And did you send this email?

5 A Yes. I was asked to send the email.

6 Q And why did you send these emails  
7 regarding GNETS?

8 A I was asked by leadership in the  
9 department to notify state senators,  
10 representatives, where GNETS facilities might be  
11 closed or assessed, and the leadership in the  
12 Department of Education wanted to let the State  
13 representatives or senators know, in case they  
14 received a phone call from constituents about a  
15 GNETS program.

16 Q And does, does this kind of a job duty  
17 fall within the external affairs portion of your  
18 job?

19 A Because I -- I'm sorry.

20 Because I worked with legislators at that  
21 time.

22 Q So did you have any role in recommending  
23 the facility assessments that were referenced here?

24 A No. And I did not write the letter.  
25 That's a form email that I was asked to send to

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
138

1 state senators and state representatives.

2 Q So do you know who arranged for the  
3 facility assessments that were referenced here?

4 A No, I do not.

5 Q Who particularly asked you to send this --  
6 these letters out?

7 A It was either the chief of staff -- I  
8 believe it was the chief of staff.

9 Q Do you know who arranged for the facility  
10 assessments that are referenced here?

11 A No, I do not.

12 Q Do you know what those assessments  
13 entailed?

14 A No.

15 MS. LILL: I'm going to hand the court  
16 reporter what I'd like to have marked as  
17 Plaintiff's Exhibit 103.

18 (WHEREUPON, Plaintiff's Exhibit-103 was  
19 marked for identification.)

20 BY MS. LILL:

21 Q This document was produced to the United  
22 States and has the Bates No. GA00519154.

23 This is an email between you,  
24 Dr. McGiboney, and Matt Jones, dated February 9th,  
25 2017.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
139

1 Do you recognize this email?

2 A Yes.

3 Q So in your response at the top, you say:  
4 "GNETS is a good example of how the system works.  
5 The program was in a challenging situation. We  
6 selected an out of state expert who was approved by  
7 the State Board. Working in tandem with the Board,  
8 significant and systematic progress has been made."

9 Who selected an out of state expert?

10 A That was Matt Jones that wrote that.

11 Q I'm sorry, you're right, Matt Jones wrote  
12 that.

13 Do you know who the, who the out of state  
14 expert he refers to was?

15 A I'm not certain at that time. No, I don't  
16 know.

17 Q And do you know for what purpose?

18 A No.

19 Q Do you know what significant and systemic  
20 progress he's referring to that resulted from the  
21 hiring of this expert?

22 A No. Looking at the 2017, that may have  
23 been Nakeba because she had a -- she was very  
24 well-qualified.

25 Q Was she --

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
140

1 A But I --

2 Q Did she come from out of state?

3 A I believe so.

4 Q Did you review the facility assessment  
5 summary documents?

6 A Related to this? No.

7 Q Who made the decision to close these  
8 facilities?

9 A I don't know.

10 Q Did you participate in any of those  
11 decisions?

12 A No.

13 Q So you have been -- we talked a lot about  
14 your work advocating for positive school climate for  
15 many years; is that correct?

16 A Yes.

17 Q And you believe positive school climate  
18 has myriad positive effects on students; is that  
19 correct?

20 A Yes.

21 Q And you believe that a negative school  
22 climate can harm students in myriad ways, correct?

23 A It could have a negative effect on them.

24 Q Do you also believe that the effective  
25 provision of mental and behavioral health depends on

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

141

1 a positive school climate?

2 A It depends --

3 MR. BEDARD: Object to form.

4 A -- depends on it, but it can enhance the  
5 outcomes, I believe.

6 Q Can a negative school climate exacerbate  
7 challenging behaviors?

8 MR. BEDARD: Object to form.

9 A We don't know that for a fact, but if you  
10 ask my opinion, I would say yes.

11 Q Does a negative school climate make it  
12 difficult to provide effective mental and behavioral  
13 health services to students?

14 MR. BEDARD: Object to form.

15 A Again, there's no evidence to that effect,  
16 but my opinion is yes.

17 MS. LILL: I'm going to share a document  
18 on my screen. You have to give me a minute  
19 here.

20 BY MS. LILL:

21 Q So I'm going to direct your attention to  
22 Exhibit 98, which we've already introduced, which is  
23 the manuscript for the Psychology of School Climate.

24 MR. BEDARD: This is the digital one?

25 MS. LILL: It is and I'm sharing it.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
142

1 (Discussion ensued off the record.)

2 BY MS. LILL:

3 Q So this is Chapter 10 of this book that  
4 you wrote, Dr. McGiboney. And I want to direct you  
5 to this sentence here that starts with "Improving?"

6 A Yes.

7 Q It says: "Improving school climate  
8 without considering the physical conditions of  
9 schools will be counterproductive."

10 Do you agree with that?

11 A Yes.

12 Q And here, the sentence starting -- this is  
13 the same chapter, starting with "The condition."

14 "The condition of the school building  
15 matters and it's difficult to effectively change  
16 school climate without also improving those building  
17 conditions."

18 Do you agree with that statement?

19 A Yes.

20 Q Same chapter, Page 164 here, starting with  
21 "The double-trouble."

22 "The double-trouble for schools is a  
23 school with facility issues and other negative  
24 school climate components. In those circumstances,  
25 the students have very little likelihood of

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
143

1 fulfilling their potential and teachers will find  
2 the conditions for learning compromised."

3 In the next paragraph it goes on to say:  
4 "Woolner, McCarter, Wall, and Higgins found that the  
5 interaction of the physical conditions of the school  
6 and the school climate were important for all  
7 students, but especially important for students with  
8 special needs."

9 Do you agree with that?

10 A That's what was reported in that research.

11 Q Are you aware of any research that has  
12 undermined this statement?

13 A No.

14 Q In your extensive experience researching  
15 school climate and advocating for positive school  
16 climate, if a school is dirty, how does that impact  
17 school climate?

18 MR. BEDARD: Object to form.

19 A It gives the impression to the students  
20 and staff that the leadership doesn't care.

21 Q In our discussion earlier you referenced  
22 the importance of having clean and functional  
23 restrooms?

24 A Yes.

25 Q Is that important for a positive school

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

144

1 climate?

2 A Yes, in my opinion.

3 Q Why?

4 A Again, it's back to expectation. If you  
5 go into a restroom where there's, whether it's a  
6 school or any facility you go into and it's dirty  
7 and filthy, then you have to question whether the  
8 leadership is dedicated to the staff and to the  
9 students, or in a, in a -- in a building that has  
10 clients or customers, you'd have to question whether  
11 they really are concerned about the clients or the  
12 customers if the restrooms are dirty.

13 Q And if the grass is uncut, how does that  
14 negatively --

15 A Well, that -- by, by itself, that would  
16 not be an indication of a negative school climate.  
17 It's the collective impact of the hedges not being  
18 trimmed, the grass not being cut, the general  
19 maintenance of the campus not being considered by  
20 leadership, not just the grass not being cut.

21 Q And what does that communicate to  
22 students?

23 A Again --

24 MR. BEDARD: Object to form.

25 A Again, does, does anyone care about the

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
145

1 appearance of the building? Does anyone care about  
2 the maintenance of the building? And consequently,  
3 do they care about the students and staff?

4 Q If there was a visible pest infestation in  
5 the building, how would that impact school climate?

6 A Well, that could be a health issue as  
7 well, which would impact school climate. Because  
8 you want the school climate -- that includes safety  
9 and security and a sense of well-being. And if it's  
10 insect infestation, that's not going to facilitate a  
11 feeling of well-being.

12 Q And in this, in this statement in your  
13 book that I just read to you, "Woolner, McCarter,  
14 Wall, and Higgins found that the interaction of the  
15 physical conditions of the school and the school  
16 climate were important for all students, but  
17 especially for students with special needs," if you  
18 found these conditions in a school for students with  
19 special needs, is that negative impact greater on  
20 those students?

21 A In my opinion, yes, because they're more  
22 vulnerable.

23 Q Does that also apply to students with  
24 emotional and behavioral needs?

25 A They're more vulnerable.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
146

1 Q If the walls within a school are largely  
2 bear of any student work or art, what impact, if  
3 any, would that have on school climate?

4 MR. BEDARD: Object to form.

5 A That's not a straightforward question, and  
6 I'll tell you why. Because in some jurisdictions  
7 the fire code prevents schools from putting up  
8 student work. They consider it a fire hazard.

9 And that varies from school district to  
10 school strict based on the fire codes and based on  
11 the inspection by the fire marshal.

12 And I know that from experience because  
13 going -- having gone into schools, I've noticed the  
14 difference, whether there will be some that had  
15 artwork everywhere, and some that there is not  
16 artwork anywhere. And most of the time where  
17 there's no artwork, they would say, well, the fire  
18 marshal told us to take it down.

19 So because of that, I can't answer your  
20 question directly.

21 Q That's fair.

22 Does the -- if a school had a poor smell,  
23 would that negatively impact school climate?

24 MR. BEDARD: Object to form.

25 A If it remained. So if it persisted.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
147

1                   There's all kinds of smells in schools.

2           Q       Fair enough.

3           A       Most of them are not pleasant but you  
4 don't want them to linger, you know, day-in and  
5 day-out. The same smells day-in and day-out.

6           Q       If there's no art room at a school, how  
7 does that impact -- how does that impact school  
8 climate?

9                   MR. BEDARD: Object to form.

10          A       It doesn't really have an impact, in my  
11 opinion, because many times, particularly elementary  
12 school, the art teacher has a rolling class, and  
13 they go into classrooms and have the art lessons in  
14 the class. So there's not really an art room per  
15 se.

16                   And then in some high schools and middle  
17 schools there is an art room. But even with those,  
18 some of them have shifted more to the mobile art  
19 program going into classrooms, instead of the  
20 students having to get up and leave the classroom,  
21 go down the hallway, go to an art room. It's  
22 bringing the art to them.

23                   So I can't say it really would have an  
24 impact not having an art room, per se.

25          Q       In your writing around school climate, do

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
148

1 you discuss the importance of participation in  
2 extracurricular activities?

3 A Yes.

4 Q How is that important to school climate?

5 A Well, it's not just extracurricular  
6 activities, because some of those activities can  
7 take place -- the term "extracurricular" implies it  
8 is always after school. There are some  
9 opportunities that schools provide to students for  
10 extracurricular activities during the school day.

11 So that perhaps you may remember study  
12 halls. Well, those study hall periods now have been  
13 turned into activity periods for lot of schools  
14 where a student can participate, say, in a chess  
15 club during that period of time.

16 But it's important to have, in my opinion,  
17 again my opinion, based on the research and  
18 experiences, that students do well in school when  
19 they feel connected, when they feel engaged. And  
20 one way to do that is to have a lot of clubs and  
21 activities for them to engage in other than just the  
22 academic work.

23 Q We talked about PBIS a little bit earlier.  
24 How does PBIS help create a positive school climate?  
25 It addresses all those issues -- all those

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

149

1 determinants we talked about earlier: The social,  
2 emotional, the camaraderie, the engagement, the  
3 connectedness, the cleanliness of the building, the  
4 availability of someone to talk to if the student  
5 has concerns, the welcome -- the parents are  
6 welcomed to come into the building, encouraged to  
7 come into the building, or the volunteers are  
8 encouraged to come into the building.

9 All those are important components of a  
10 positive school climate.

11 MS. LILL: I'm going to hand the court  
12 reporter what I'd like to have marked as  
13 Plaintiff's Exhibit 104.

14 (WHEREUPON, Plaintiff's Exhibit-104 was  
15 marked for identification.)

16 BY MS. LILL:

17 Q This was produced to us by the State and  
18 bears the Bates labeled GA01640573.

19 This appears to be an email that may have  
20 remained in draft form. The subject matter is  
21 GNETS, and it says it was sent on 8/13/2020.

22 Do you see that?

23 A Yes.

24 Q This was an email that was produced from  
25 your records, Dr. McGiboney. Do you recognize this

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
150

1 document?

2 MR. BEDARD: I just object to the extent  
3 -- I don't see anything on the document itself  
4 that indicates that it was from McGiboney's  
5 files, but I'll just put that on the record.

6 If you recognize it, you can say so.

7 A No, I don't.

8 Q You don't recall preparing this?

9 A No, I don't. The contents makes reference  
10 to the school offices, school safety and climate,  
11 and PBIS, but as far as this document, I don't  
12 recall this.

13 Q So at the very bottom of this document --

14 A On the first page?

15 Q No. I'm sorry. The second page.

16 A The second page.

17 Q About five lines down, it starts with  
18 GaDOE, Georgia Department of Ed, PBIS.

19 Do you see that?

20 A Yes.

21 Q It says: "Georgia Department of Ed PBIS  
22 has 4 levels of school recognition."

23 A Right.

24 Q "With specific criteria all  
25 schools/programs must meet to achieve that level."

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
151

1 A Yes.

2 Q Does this accurately reflect the four  
3 level system?

4 A Yes. The installing, the emerging, the  
5 distinguished, operational.

6 Q So installing level, "schools are either  
7 participating in year one training or building their  
8 PBIS system framework." Is that accurate?

9 A Yes.

10 Q And for Emerging, "initial fidelity met."  
11 Is that accurate?

12 A Yes.

13 Q Operational, "evidence provided for  
14 high-fidelity of Tier I implementation."

15 A Yes.

16 Q Is that correct? Did you say yes?

17 A Yes.

18 Q Sorry.

19 And Distinguished, "high fidelity at Tier  
20 I and installing Tier II system."

21 Is that correct?

22 A Yes.

23 Q Is there anything that you would want to  
24 add to clarify about the ratings system to further  
25 explain it?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIAJune 08, 2022  
152

1 MR. BEDARD: Object to form.

2 A I believe these are short descriptions of  
3 it. There is a fidelity measure. Reference to  
4 fidelity is not just incidental. There is a  
5 fidelity measure of the effectiveness of PBIS, so  
6 that you know that it's being implemented correctly.

7 Q And can you give a general overview of  
8 what supports are provided in each tier?

9 A It is based somewhat on the school itself.  
10 There's not a canned program that you take into the  
11 school and say this is what you have to do.

12 There is some consideration given to where  
13 is the school now. For example, there's a review of  
14 the data, how many suspensions, how many office  
15 discipline referrals, academic standing.

16 A lot of data is reviewed in the first --  
17 in the installing, to get the staff -- because the  
18 staff helps build the overall plan. The PBIS is a  
19 framework from which the facilitator can work to  
20 help the staff develop plan that's unique to that  
21 school based on those measures of fidelity.

22 It starts with a data review. So the  
23 installing is helping the school identify what's  
24 important, what do they have trouble with, what  
25 should they be working on.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
153

1           It could be a school that's doing well  
2 academically but they don't have very many ways for  
3 students to engaged with each other. They don't  
4 have very many ways to build on those social  
5 determinants. So the school may decide to build a  
6 network of extracurricular activities or  
7 intracurricular activities. That may be something  
8 they do.

9           And then the next level is, how are they  
10 going to do that? How can the staff participate in  
11 that?

12           And the operation end is, are they  
13 actually doing it?

14           And then the distinguished part is, how  
15 well is it working? Is it helping just a few  
16 students or it is helping all students? Do all  
17 students have access to this or just a few?

18           So it goes through an organic development  
19 process as well.

20           Q     So are there schools that have fully  
21 implemented PBIS at all tiers?

22           A     Yes.

23           Q     And what level on this rating system would  
24 they be at?

25           A     At the top level.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
154

1 Q So distinguished?

2 A Distinguished, yes.

3 Q So the distinguished rating here says  
4 "high fidelity at Tier I and installing Tier II  
5 system."

6 So what I'm asking is, if you have a  
7 school that has installed all three tiers and it's  
8 implementing them with fidelity, does that school --  
9 is there any rating beyond distinguished?

10 A Not, not formally. You know, within the  
11 PBIS framework, that's really based on those four.  
12 But there are some schools that continue to be  
13 outstanding in what they're doing and they have  
14 terrific outcomes for students and so there are some  
15 incentives for them to be named and recognized.

16 Particularly with their peer groups. This  
17 school has been the distinguished school for, say,  
18 five years, so we want to recognize the work they're  
19 doing.

20 So there's other ways to recognize what  
21 they're doing beyond the framework itself.

22 Q And Tier II and Tier III supports, can you  
23 talk -- can you explain just what those are?

24 A Tier I is every classroom. Tier I is all  
25 children. And that's the strength, in my opinion,

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

155

1 of school climate, and PBIS is that it's for  
2 everybody. You improve the -- you lift everybody  
3 up. That's the value of workplace climate, that's  
4 the value of school climate, and Tier I is everyone.  
5 It's not just focusing on kids who are having,  
6 quote, problems.

7 Tier II is more localized in that you  
8 identify a smaller group of students who may be  
9 showing a need for more direct and more often  
10 interventions or supports. They just need to have a  
11 little extra attention and maybe a little extra  
12 support. Maybe they're having difficulty with  
13 attendance because of home problems. So there may  
14 be a coordinated effort with a local social worker  
15 from DFCS or the school social worker working with  
16 DFCS to try to work on the attendance issue.

17 So that's not Tier I because it's not  
18 everyone, but it's Tier II because the child is  
19 having more problems, but it's not Tier III because  
20 they don't need special education.

21 So as you can imagine, it's like the  
22 pyramid. You have all students in Tier I, and then  
23 it gets a little bit more narrow, and of course Tier  
24 III is when you have the more direct intervention,  
25 like with special education.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIAJune 08, 2022  
156

1           So PBIS was not really intended to go all  
2     the way to Tier III, but the U.S. Department of  
3     Education has encouraged school districts, through  
4     Project AWARE, which is bringing mental health  
5     services into schools.

6           The Project AWARE grant, as you probably  
7     are aware, is the federal grant, encourages schools  
8     to even include some of the PBIS principals even in  
9     Tier III, but not, not as -- not as an intervention  
10    and not as therapeutic services, but as, again,  
11    focusing on how the elements of a positive school  
12    climate can even impact Tier III.

13          Q     Thank you. And we're going to talk more  
14    about Project AWARE in a little bit, but that was  
15    very helpful.

16           So returning to this document, if you move  
17    just a couple of lines down, just to the very -- the  
18    content at the very end of this document, it says  
19    that there was no recognition in 2019-2020 school  
20    year due to school closures from COVID.

21           Do you understand that to have been true?

22          A     Yes.

23          Q     And then it states that the "recognition  
24    below is included separately for GNETS only for the  
25    purposes of this report," and it lists the

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
157

1 distinguished, operational, emerging, and installing  
2 readings for the -- and it says above, the 2018-2019  
3 school year, number of schools at each recognition  
4 level.

5 Do you have any reason to believe this is  
6 inaccurate?

7 MR. BEDARD: Object to form.

8 A Do I believe that it is accurate?

9 Q Do you believe that this is accurate?

10 A I would speculate that it is. It looks  
11 like it probably is accurate, but I cannot validate  
12 that.

13 Q So in the distinguished category listed  
14 here, it has 58 schools and programs, four GNETS  
15 programs, and six sites within the programs.

16 Is that an indication that in 2019 of all  
17 the GNETS programs four programs received  
18 distinguished ratings?

19 MR. BEDARD: Object to form.

20 I think he already testified he doesn't  
21 know if the numbers are correct or not.

22 A That's what the document says. I don't --  
23 I can't verify it.

24 Q So earlier I showed you Exhibit 99, which  
25 was an email that you sent to Diane Durrence, that

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
158

1 characterized sort of the GNETS program and the  
2 types of students that it served?

3 A Right.

4 Q And in that email you wrote: "There are  
5 psychological education centers that serve severely  
6 emotionally disturbed students."

7 Is that, is that your understanding of the  
8 population of students that the GNETS program  
9 serves?

10 MR. BEDARD: Object to form.

11 A Generally speaking, yes.

12 Q Are there any exceptions to that?

13 A Not that I'm aware of.

14 Q If a school serving this population of  
15 students, so a GNETS school, was implementing PBIS,  
16 what level of services would this category of  
17 students need?

18 MR. BEDARD: Object to form.

19 A Level of service?

20 Q So tier. I'm sorry.

21 What tier level?

22 A It would, it would -- you're talking about  
23 PBIS tier?

24 Q Yes.

25 A It would go through the same process of

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIAJune 08, 2022  
159

1 emerging and, and the Tier I would be all the  
2 students in the GNETS program, just like Tier I  
3 would be all the students in the typical school.

4 Q Do students with severe emotional and  
5 behavioral challenges need Tier II and Tier III  
6 supports, in your opinion?

7 MR. BEDARD: Object to form.

8 A Technically, they're already in Tier III  
9 as far as least restrictive environment, but that  
10 doesn't mean you can't focus on improving the  
11 climate of the school or even taking the tier -- the  
12 multitiered concept into a GNETS program and have  
13 something that impacts all the students, even though  
14 they each have their own Individual Education  
15 Program.

16 Q So, in your opinion, can a GNETS program  
17 have an effective PBIS program?

18 A I think it can. In my opinion, it can.  
19 That's why we tried to add PBIS to the GNETS  
20 programs. At least we, as a department, offered it  
21 to the GNETS programs.

22 Q And has that been successful?

23 A Well, according to this document, which  
24 frankly, again, I don't recognize, which is it seems  
25 like it's an unusual document because even the

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
160

1 font's unusual.

2 But we were seeing some success. When I  
3 left the department, we were seeing some success in  
4 implementing the components of PBIS in the GNETS  
5 program.

6 It's different. It's a different setting,  
7 just like every school that you implement PBIS is a  
8 little bit different. That's why it's not a canned  
9 program, and that's why it has proven to be  
10 effective in a lot of schools because it's not a  
11 forced program. It's volunteer. Nobody is required  
12 to do it.

13 That's the essential part of PBIS, is that  
14 it's not required. In some states PBIS is required.  
15 In Georgia, it's not required. It's all voluntary.

16 So us to have I believe all the GNETS  
17 trying to implement PBIS and 1,400 schools  
18 implementing PBIS is I think a tribute to the PBIS  
19 staff because, again, it's all voluntary. The  
20 schools don't have to do it.

21 Q And you said that there was some evidence  
22 that it was taking hold --

23 A Yes.

24 Q -- in GNETS?

25 What, what is that evidence that you

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
161

1 reviewed?

2 A The data there.

3 Q But is there other evidence aside from  
4 what I showed you --

5 A Just -- I'm sorry, I didn't mean to  
6 interrupt you.

7 Other evidence? Anecdotal reports. When  
8 I met with the PBIS team, they were pretty excited  
9 about some of the progress being made in some of the  
10 GNETS.

11 Q If a GNETS program was rated as emerging,  
12 what does that indicate, if anything, about how it's  
13 serving its students?

14 MR. BEDARD: Object to form.

15 A Emerging means there's some changes taking  
16 place that are discernible. And it could be more  
17 interaction between students. It could be more  
18 interaction between staff. It could be more  
19 interaction between staff and parents.

20 Q If general education schools were  
21 effectively implementing PBIS with fidelity,  
22 including Tier II and Tier III supports, would that  
23 allow students with emotional and behavioral  
24 disabilities to receive services and supports in  
25 more integrated settings?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
162

1 MR. BEDARD: Object to form.

2 A I couldn't really answer that. I don't  
3 have any research I can point to for that to answer  
4 that.

5 Q When did -- when did the State of Georgia  
6 begin its PBIS initiatives in earnest?

7 A I believe -- I believe that was around  
8 2002 -- 2001, 2002. Around that time frame.

9 No, maybe it was closer to 2004.

10 When I came to the department in 2007, we  
11 had about -- we only had about 60 schools  
12 implementing PBIS. So that became one of my  
13 missions, so to speak, was to expand the program.

14 At that time, it was focusing very  
15 narrowly on just those schools, and I just felt like  
16 there was more to offer and more that could be done.  
17 And the State school superintendent at that time  
18 encouraged that expansion.

19 So we went into a number of schools, spoke  
20 to a number of educational associations and said  
21 this is what we have to offer. But, again, it was  
22 voluntary.

23 So the growth of it was encouraging.  
24 People wanted their schools to be better.

25 Q Are you surprised that in 2022 there are

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
163

1 GNETS programs that have not fully implemented PBIS?

2 A No. It would be the same as asking was I  
3 surprised that any school is not fully implementing  
4 PBIS because it depends on where they started.

5 One of the challenges of any school is --  
6 can be staff turnover. As you know, in education,  
7 generally speaking across the board, there's a lot  
8 of teacher and staff turnover.

9 So sometimes schools, if for some reason  
10 they had a significant number of staff turnover,  
11 they would almost have to go back to the installing  
12 phase or the emerging phase so that everybody -- the  
13 new staff members are also trained and caught up to  
14 date.

15 So it really is -- it depends on the  
16 situation.

17 So to say, answer your question, no, I'm  
18 not surprised because it depends on where those  
19 schools started. They could have had a leadership  
20 change and start all over.

21 Q Are you familiar with the concept of the  
22 Interconnected Systems Framework?

23 A Yes.

24 MR. BEDARD: Victoria, if you're -- I  
25 don't know if this is the same subject or

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
164

1       you're moving to something else, but I think  
2       we've been going about an hour and a half.

3               MS. LILL: We can take a break if you  
4       like. Sure.

5               THE VIDEOGRAPHER: Off the record at 3:06  
6       p.m.

7               (A recess was taken.)

8               THE VIDEOGRAPHER: Back on the record at  
9       3:18 p.m.

10   BY MS. LILL:

11       Q     Dr. McGiboney, right before the break I  
12   was asking you about the Interconnected Systems  
13   Framework.

14               Are you familiar with that concept?

15       A     Yes.

16       Q     Is it also referred to as ISF?

17       A     That's my understanding.

18       Q     Can you describe the Interconnected  
19   Systems Framework as you understand it?

20       A     It's a framework from the U.S. Department  
21   of Education, endorses to, as I understand it, to  
22   link more behavioral health services with schools.

23       Q     Do you understand it to be in use in  
24   Georgia?

25       A     Yes.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
165

1 Q In what way?

2 A Through PBIS and through the Project  
3 AWARE.

4 Q And does somebody at the State oversee  
5 implementation of an Interconnected Systems  
6 Framework?

7 A Not directly. We have a Project AWARE  
8 grant, and our PB -- the department's PBIS program  
9 manager talks about, to school districts, about the  
10 interconnected framework, and Project AWARE is part  
11 of the PBIS team.

12 Q We will talk a little bit more about this  
13 in a few minutes. Thank you.

14 MS. LILL: I'm handing the court reporter  
15 what I'd like to have marked as Plaintiff's  
16 Exhibit 105.

17 (WHEREUPON, Plaintiff's Exhibit-105 was  
18 marked for identification.)

19 BY MS. LILL:

20 Q This document was produced to the United  
21 States and it has the Bates-stamp No. GA00528290.  
22 It is an email chain between Dr. McGiboney and Myrel  
23 Seigler, dated September 8, 2017.

24 Dr. McGiboney, does this document look  
25 familiar to you?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
166

1           A       No, I don't -- I can't say I recall this,  
2       except -- I'm trying to remember who Myrel Seigler  
3       is.

4           Q       So it appears on September 7, 2017 that  
5       Myrel Seigler emails you with questions about  
6       something that appeared in cabinet minutes, and that  
7       particular item appears to be a contract to provide  
8       applied behavioral analysis principles as a  
9       self-guided professional development and support  
10      platform designed for teachers and  
11      paraprofessionals.

12                   Do you see that?

13                   MR. BEDARD: Object to the form.

14           A       Yes.

15           Q       And Myrel Seigler asks you if this is  
16      something that school counselors and social workers  
17      should be aware of.

18                   Do you see that?

19           A       Yes.

20           Q       In your reply, September 8, 2017, you say:  
21      "This Board item is only for the GNETS programs.  
22      It's ABA training because we are out of IDEA  
23      compliance at the GNETS."

24                   Do you see that?

25           A       Yes.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
167

1 Q How are the GNETS out of IDEA compliance?

2 A I don't recall.

3 Q Do you recall anything about this email or  
4 what you meant here?

5 A No, I don't.

6 Q In your opinion as a psychologist focused  
7 on student mental health, what kinds of behavioral  
8 health services should be provided to students with  
9 emotional and behavioral disabilities in GNETS?

10 A Depends on what they need.

11 Q Can you give me some samples of the kinds  
12 of services --

13 A GNETS?

14 Q -- that they would need?

15 A Well, I have not worked in a GNETS, so I  
16 couldn't fully answer that question. Again, it  
17 would depend on what the IEP calls for, because  
18 mental health is on a scale of 1 to 10 as far as  
19 severity. So it depends on what the IEP asks for.

20 Q Do you understand the IEPs of these  
21 students to require a high level of need?

22 MR. BEDARD: Object to form.

23 A I would think so with GNETS.

24 Q Would you think that students with this  
25 level of need would need counseling?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
168

1 MR. BEDARD: Object to the form.

2 A Again, it depends on how you define  
3 counseling and also depends on the IEP.

4 Q Would you expect GNETS to employ  
5 psychologists?

6 MR. BEDARD: Object to form.

7 A Again, it depends on the IEP.

8 Q Do you understand students in GNETS to  
9 have a high level of need for therapeutic services?

10 A I know it's -- the IEP team has determined  
11 that's the least restrictive environment. By the  
12 nature of the name, education therapeutic services  
13 would imply to be, yes, they have a higher level of  
14 need than typical students.

15 Q And do you understand them to have mental  
16 health and behavioral-related disabilities?

17 A I don't know that all of them have both.

18 Q Do you know what the entrance criteria is  
19 for GNETS?

20 A No.

21 Q Earlier today we looked at your book, the  
22 Psychology of School Climate. Do you discuss  
23 student/teacher interactions in your book?

24 A Yes.

25 Q Do you discuss whether those interactions

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
169

1 impact school climate?

2 A Yes.

3 Q And what do you say in your book about  
4 that?

5 A That those interactions are important.

6 Q Can you tell me more about what kinds of  
7 interactions you think are important?

8 A That hopefully they will be positive  
9 interactions and repeated interactions.

10 Q And does that include the learning, the  
11 teaching and learning?

12 A Learning doesn't take place without  
13 engagement.

14 Q Tell me more about what that means.

15 A That means that the teacher and the  
16 student have to connect. They have to understand  
17 each other. That's the definition of engagement,  
18 and from that engagement learning takes place, or  
19 can take place.

20 Q Do you have an opinion about how online  
21 learning impacts school climate?

22 A Well, if they're not in school, so it's  
23 difficult to make that connection.

24 Q If they're in school and learning largely  
25 from programs on a computer, how does that impact

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
170

1 the school climate?

2 MR. BEDARD: Object to form.

3 A There are a lot of schools that have had  
4 online programs for years, and that can still have a  
5 positive school climate.

6 Q If students were learning entirely or  
7 largely by computer in the presence of a school  
8 building, do you have an opinion about what impact,  
9 if any, that has on school climate?

10 A It could still --

11 MR. BEDARD: Object.

12 A -- a positive school climate, because  
13 they're not going to be sitting at their computer  
14 for seven hours. They'll have to interact with  
15 others. They'll have to go in the hallway. They'll  
16 have to go into the cafeteria.

17 So there's still plenty of opportunities  
18 to have a positive school climate while they're  
19 there.

20 Q And if that school doesn't have a  
21 cafeteria?

22 A What I'm saying is there will be other  
23 opportunities than just sitting at the computer.  
24 They're not going to look at their computer for six  
25 or seven hours. So what they do when they're not

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
171

1 working on their computer is important.

2 Q What is Project AWARE?

3 A I don't have a lot of knowledge about  
4 Project AWARE. I know it's a federal grant where a  
5 state can apply, state agency can apply for the  
6 grant, and typically it's -- the State, working with  
7 three identified school districts, typically small,  
8 medium, large district, to help them integrate ISF,  
9 which is the merging of behavioral health services  
10 supports with PBIS.

11 Q Who initiated Project AWARE?

12 A The Federal Government.

13 Q What is your understanding of why it was  
14 created?

15 A To expand behavioral health services in  
16 schools.

17 Q Does the Department of Education have  
18 direct responsibility over Project Aware?

19 A It's their --

20 MR. BEDARD: Object to form.

21 A -- grant.

22 Q I'm sorry, the Georgia Department of  
23 Education -- does the Georgia Department of  
24 Education have direct responsibility over  
25 implementation of Project AWARE in the State of

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
172

1 Georgia?

2 MR. BEDARD: Object to form.

3 A In Georgia, yes. It's a state -- the  
4 State Education Agency, which is the Department of  
5 Education applied for the grant. So we are the  
6 grantee, and we work with three local school  
7 districts within the Project AWARE guidelines  
8 provided by the U.S. Department of Education.

9 Q Okay. So stepping back, so the department  
10 of the -- the Georgia Department of Education  
11 applied for a grant to participate --

12 A Yes.

13 Q -- in Project AWARE; is that correct?

14 A That's correct.

15 Q And that grant was awarded to the Georgia  
16 Department of Education?

17 A That's correct.

18 Q Okay. And so the Georgia Department of  
19 Education now participates in Project AWARE?

20 A Yes.

21 Q And the Georgia Department of Education  
22 has direct oversight over implementation of Project  
23 AWARE in Georgia?

24 MR. BEDARD: Object to form.

25 A Yes.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
173

1 Q And what, if any, has your role been in  
2 implementation of Project AWARE in Georgia?

3 A None, because the project manager for PBIS  
4 is the one who oversees the person who is working  
5 with that grant.

6 Q Earlier we discussed the fact that at some  
7 point you oversaw PBIS?

8 A Yes. The direct report is the program  
9 manager.

10 Q So were you overseeing the person who  
11 oversaw implementation of Project AWARE?

12 A She's not a direct report, no. Her -- she  
13 reports directly to the program manager of PBIS.

14 Q So are you aware of how much money was  
15 granted to the department, the Georgia Department of  
16 Education, for Project AWARE?

17 A I don't recall.

18 MS. LILL: I'm going to hand the court  
19 reporter what I'd like to have marked as  
20 Plaintiff's Exhibit 106.

21 (WHEREUPON, Plaintiff's-Exhibit-106 was  
22 marked for identification.)

23 BY MS. LILL:

24 Q So I've just handed Exhibit 106 to the  
25 court reporter, and you now have that,

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

174

1 Dr. McGiboney.

2 This document was produced to us bearing  
3 the Bates-stamp GA02479129. It is an email between  
4 you and Roma Amin, dated September 9, 2015.

5 I have also provided the attachment, which  
6 is a PowerPoint. The PowerPoint, I will note, was  
7 produced in native with the Bates-stamp GA02479132,  
8 and we have imaged it and provided it here with  
9 sub-Bates labels.

10 So the first page of the PowerPoint is  
11 stamped GA02479132.001.

12 Do you recognize this document,  
13 Dr. McGiboney?

14 A Yes.

15 Q Your email -- first of all, who is Roma  
16 Amin?

17 A She worked in the -- I think she worked  
18 for state representative Katie Dempsey in the House  
19 of Representatives.

20 Q And her email to you indicates that she's  
21 asking you to testify in connection with the House  
22 Study Committee on Children's Mental Health. Is  
23 that correct?

24 A Yes.

25 Q Did you prepare this PowerPoint in

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
175

1 connection with your testimony?

2 A Yes.

3 Q Is the attached PowerPoint the one that is  
4 referred to in the emails between you and Ms. Amin?

5 A As I recall, yes.

6 Q Did you prepare the content of this  
7 PowerPoint yourself?

8 A Yes.

9 Q Can you please turn to Pages 14 to 16, as  
10 labeled on the PowerPoint.

11 I'd like you to just review the bullet  
12 points on Pages 14 to 16, and I'm going to ask you  
13 if they accurately describe Project AWARE and the  
14 goals for the program?

15 A To the best of my knowledge, yes.

16 Q Last you knew, were these still the goals  
17 of Project AWARE?

18 A I do not believe they changed. There were  
19 two grants, and I believe they were the same.

20 Q Tell me about that when you say there are  
21 two grants.

22 A There was a grant that was recently  
23 awarded to the Department of Education, and then  
24 there was this grant, and grant one and grant two.

25 It was three different school districts,

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
176

1 however, for the second grant.

2 Q I see. So each time that the Georgia  
3 Department of Education has received a grant for  
4 Project AWARE, it has been for three school  
5 districts --

6 A Yes.

7 Q -- to participate?

8 A Yes. That's the requirement in the grant.

9 Q Okay. What is the target population for  
10 Project AWARE?

11 MR. BEDARD: Object to form.

12 A It's for school-age children, primarily  
13 middle and high school, as I recall.

14 Q And is it any child? Or is it a child  
15 with a particular kind of need for mental health  
16 services?

17 A It involves a screening process, as I  
18 recall. So there would be a distinction between a  
19 Tier I and Tier II. So this would be related more  
20 to Tier II.

21 As we were talking about earlier, PBIS was  
22 moving at the request of the Department of Education  
23 to start implementing more Tier II interventions, as  
24 well as Tier I.

25 Q It might be helpful if you just give us an

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
177

1 overview of your understanding of what Project AWARE  
2 is in your own words.

3 A As I mentioned earlier, it's an effort to  
4 expand awareness of mental health and behavioral  
5 health issues among the staff, and also provide some  
6 Tier II interventions for students.

7 Q Do you know whether there are any specific  
8 criteria for youth to be served through Project  
9 AWARE?

10 A Yes. The grant is -- the grant  
11 requirements are very specific.

12 Q And can you tell me about those?

13 A Not specifically, no.

14 Q Could students who meet the eligibility  
15 criteria for GNETS services benefit in theory from  
16 the services offered through Project AWARE?

17 A In theory, yes.

18 MR. BEDARD: Object to the form.

19 Q Are services through Project AWARE  
20 available to students enrolled in GNETS?

21 A The grant -- the federal grant is very  
22 specific. It requires the state agency applying for  
23 the grant to identify a small, small size based on  
24 the student enrollment, and medium size school  
25 system based on student enrollment, and a large

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
178

1 school system based on student enrollment.

2 So it's for school districts specifically.

3 It's not for programs.

4 Q So GNETS is a program?

5 A Yes. It's not a school district.

6 Q But do the students attending GNETS belong  
7 to a school district?

8 A Most of them do, yes.

9 Q Are they -- is there -- does the school  
10 district own the student in terms of are they  
11 responsible for providing the student's education,  
12 even when the student is in GNETS?

13 A Yes.

14 MR. BEDARD: Object to form.

15 Q And so do you know where -- can you give  
16 me the name of one of the counties that is working  
17 with Project AWARE?

18 A During this grant, Muscogee, Newton and  
19 Spalding County.

20 Q So if you had a student who was attending  
21 Muscogee, who lived in Muscogee school district and  
22 was a public school student and that student was  
23 attending a GNETS program, could that student  
24 receive services through Project AWARE?

25 MR. BEDARD: Object to form.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
179

1           A     I can't specifically answer that. I would  
2     imagine they could since that's part -- if that  
3     GNETS is part of that particular school district.

4           Q     Do you know who tracks how many behavioral  
5     health services are provide annually through Project  
6     AWARE in Georgia?

7           A     The grant requires an evaluation. So that  
8     that would be part of the evaluation of the grant.

9           Q     Do you know who would do that evaluation?

10          A     I believe in the grant I think Georgia  
11     State University is the grant evaluator.

12          Q     Do you know who, if anyone, tracks  
13     outcomes for children receiving behavioral health  
14     services through Project AWARE?

15          A     Again, it would be part -- any evaluation  
16     of the grant would be through the same process.

17          Q     Have you ever reviewed that data?

18          A     I don't -- we looked at the data from the  
19     first one, but that was a long time ago.

20                 And when I say review, that was just the  
21     report back to US Ed.

22          Q     And you say "we"?

23          A     The Department of Education.

24          Q     Who specifically in the department  
25     reviewed that?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
180

1 A The Project AWARE coordinator.

2 Q Who is the Project AWARE coordinator?

3 A Rebecca Blanton.

4 Q Have you ever reviewed data about whether  
5 students in the GNETS program have ever received  
6 services from Project AWARE?

7 A No.

8 Q Do you know whether anyone at the  
9 Department of Education has reviewed that kind of  
10 data?

11 A If there's data related to the Project  
12 AWARE grant, it would be the Project AWARE  
13 coordinator.

14 Q In your opinion, would it be important to  
15 review data about whether -- data on whether  
16 students in the GNETS program had received services  
17 via Project AWARE?

18 A Well, keep in mind the majority of Project  
19 AWARE is for professional learning. It's not direct  
20 services to students. Most of the project is  
21 centered around the youth mental health first aid,  
22 which is training provided by Mental Health America,  
23 so that staff members are more aware of and able to  
24 identify the mental health needs, behavioral health  
25 needs of children.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIAJune 08, 2022  
181

1                   So the large focus is on professional  
2     learning.

3           Q       So on Page 15 of the PowerPoint I handed  
4     you, if you look at the second-to-last bullet, it  
5     says developing -- the title of this slide is  
6     "Project AWARE Implementation, and that bullet says,  
7     "Developing mental health referral processes for the  
8     three school systems to expedite the delivery of  
9     mental health services from providers for student in  
10    crisis."

11                   Can you explain how that, how that  
12    happens?

13                   MR. BEDARD: Object to the form.

14           A       When staff members are trained in the  
15    mental health awareness. They are more likely to  
16    discern when a student may have a mental health  
17    issue or mental health crisis, and from that they  
18    would know who then to refer the student to. It  
19    could be to the counselor, who then makes the  
20    referral to the parent or to a Community Service  
21    Board, or they may find out that a student already  
22    has a provider, so they just make sure the provider  
23    knows that the student is having some issues.

24           Q       And then on the very next page, on 16, the  
25    top bullet says: "Developing agreements with

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
182

1 private mental health providers in the three school  
2 systems to provide mental health services in the  
3 school or community."

4 So you just told me that Project AWARE is  
5 perhaps focused on professional learning and  
6 training. This bullet point seems to indicate that  
7 it also -- one of the goals is also direct provision  
8 mental health services. Is that accurate?

9 A It's the referral to mental health  
10 services.

11 So that staff member, if they are aware of  
12 mental health issues, they know what -- they know  
13 the difference between a referral to the discipline  
14 office and a referral to the counseling office.  
15 They'll make a referral to the counseling office now  
16 that they're aware because they have been made aware  
17 of what mental health issues could look like, how  
18 they could be manifest. So then they make an  
19 appropriate referral.

20 And then the system that's already in  
21 process hopefully would expedite that referral to  
22 the CSB, or to the private provider, depending on  
23 what the parent's insurance situation may be.

24 Q Has there been any discussion of expansion  
25 of the Project AWARE model?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
183

1 MR. BEDARD: Object to form.

2 A The Project AWARE staff does provide youth  
3 mental health training beyond those three school  
4 districts if requested, and the U.S. Department of  
5 Education said that's okay.

6 Q Beyond the provision of Project AWARE to  
7 three counties, has there been discussion either at  
8 the state or federal level that you're aware of?

9 MR. BEDARD: Object to form.

10 A About expanding --

11 Q About expanding Project AWARE, so that it  
12 goes beyond three school systems in a state?

13 A No, we haven't talked to the U.S. Ed about  
14 that, but there is an expansion of mental health  
15 awareness training.

16 Q Through Project AWARE?

17 A No. Through state funding.

18 Q And tell me about that.

19 A The legislature did a line item 2018 to  
20 allow the Department of Education to work with the  
21 National Alliance on Mental Illness and the Georgia  
22 Mental Health -- I'm sorry, Mental Health America,  
23 to go out, as I mentioned earlier, to provide  
24 training, and also the Georgia collaborative project  
25 provides training for teachers and other educators

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
184

1 on mental health awareness.

2 And at last count we had over 35,000  
3 teachers have been trained.

4 Q So I want to move to a discussion about  
5 Apex.

6 Can you tell me what the Georgia Apex  
7 program is?

8 A Just at the service level, the Department  
9 of Developmental -- the Department of Behavioral  
10 Health and Developmental Disabilities, DBHDD,  
11 received funding to provide a mental health  
12 therapist in school, in a school setting.

13 Q So the Department of Behavioral -- DBHDD  
14 received funding to provide mental health therapists  
15 in schools?

16 A Yes.

17 Q Where did they receive that funding from?

18 A I think it's coalescing of state and  
19 federal funds, but I'm not absolutely certain of  
20 that.

21 Q What is your -- why was Georgia Apex  
22 program created?

23 MR. BEDARD: Object to form.

24 A To address the access to mental health  
25 services.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
185

1 Q In schools?

2 A In schools.

3 Q How is Georgia Apex different than Project  
4 AWARE?

5 A It's therapists in schools, and Project  
6 AWARE is not therapists in schools.

7 Q What is the goal of the Georgia Apex  
8 project -- program?

9 MR. BEDARD: Object to form.

10 Object to form; calls for speculation.

11 BY MS. LILL:

12 Q Does the Georgia Apex program have a goal?

13 A To --

14 MR. BEDARD: Object to form.

15 A -- provide access to mental health  
16 services.

17 Q And what is the goal of Project AWARE?

18 MR. BEDARD: Object to form.

19 A To make staff members aware of mental  
20 health.

21 Q How do the goals for the two programs --  
22 are they the same?

23 MR. BEDARD: Object to form.

24 A No. Apex is direct service in the  
25 schools. Project AWARE is awareness of identifying

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
186

1 students who may have a mental health or behavioral  
2 health issue, which then could lead to a referral to  
3 a Community Service Board or referral to a private  
4 provider or just informing the parents.

5 Q So is it accurate for me to say that Apex  
6 is direct provision of mental health services in  
7 schools?

8 A Yes.

9 Q And Project AWARE is identification of a  
10 mental health need and referral out of the school to  
11 a community provider?

12 A That's part of it. But as it says in the  
13 name, Project AWARE is awareness of mental health.  
14 Awareness of behavioral health issues.

15 Q How was the Apex program initiated --

16 MR. BEDARD: Object to form.

17 Q -- in the State of Georgia? How did it  
18 come to be?

19 MR. BEDARD: Object to form.

20 A I don't know. I don't know the origin.

21 Q Are there individuals and agencies within  
22 the State that were proponents of the program?

23 A Proponents?

24 Q Advocated for a program like Apex?

25 A I don't know.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
187

1 Q Can you explain to me how Apex actually  
2 gets providers into schools?

3 A That's a good question. I'm not certain.

4 It's a complex process for two reasons:  
5 One is because of the workforce shortage, and the  
6 other is transportation and location of the schools  
7 and the provider.

8 Q Can you tell me what you do know about how  
9 that process works?

10 A That's entirely up to DBHDD. They make  
11 all the selections of the providers and they select  
12 the schools.

13 Q Does the Apex program involve a  
14 partnership between Community Service Boards and  
15 schools?

16 A I don't know.

17 Q So it's your understanding DBHDD has  
18 direct responsibility over the Apex program?

19 A They do. It's their program.

20 Q Why was it set that way?

21 MR. BEDARD: Object to form; calls for  
22 speculation.

23 A I don't know.

24 MS. LILL: I'm going to hand the court  
25 reporter what I'd like to have marked as

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
188

1 Plaintiff's Exhibit 107.

2 (WHEREUPON, Plaintiff's Exhibit-107 was  
3 marked for identification.)

4 BY MS. LILL:

5 Q This was a document that was produced to  
6 us by the State. It bears the Bates Stamp labeled  
7 GA00552974.

8 And it is an email from -- between Dr.  
9 McGiboney and Gail Smith, dated March 7th, 2019, and  
10 the subject is "Re: Apex Funding and Counselors."

11 I believe we already looked at a document  
12 between you and Gail Smith, but can you remind me  
13 who Gail Smith is?

14 A No. That was Sue Smith.

15 Q Sue Smith. Okay.

16 Who is Gail Smith?

17 A At that time she was a lobbyist for the  
18 Georgia Association of School Counselors.

19 Q And in this document, Ms. Smith asks you,  
20 quote: "If the Governor's Office/DOE will provide  
21 guidance on how to utilize Apex counselors."

22 Do you see that?

23 A Yes.

24 Q And you replied: DBHDD -- I'm sorry.

25 "Apex is strictly a BHDD function. The

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
189

1 DOE has nothing to do with the program and the  
2 Governor's Office will not provide guidance since  
3 the program is housed in BHDD. I have criticized  
4 the rollout of Apex because BHDD has not included  
5 the DOE or school counselors ."

6 Do you see that?

7 A Yes.

8 Q When you say BHDD there, do you mean  
9 Departmental of Behavioral Health and Developmental  
10 Disabilities, DBHDD?

11 A Yes.

12 Q Is there a practice or policy that the  
13 Governor's Office gives guidance for the Department  
14 of Education but not for the Department of  
15 Behavioral Health and Developmental Disabilities?

16 MR. BEDARD: Object to form.

17 A I can't answer that question.

18 Q You say here in the email: "The  
19 Governor's office will not provide guidance since  
20 the program is housed in BHDD."

21 What did you mean when you said that?

22 A Going back to the first sentence, Apex is  
23 strictly a BHDD function.

24 Q Are you saying if there was such feedback  
25 from the Governor's office or guidance, it would go

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022

190

1 directly to that agency?

2 A No. What I'm saying is the guidance would  
3 come from BHDD to DOE, and not from the governor.

4 Q Thank you for that.

5 What specifically are your criticisms of  
6 the rollout of Apex, as you say here?

7 A As I said here, they did not contact  
8 school counselors to get suggestions of how it would  
9 be rolled out, how it would be introduced to  
10 schools.

11 Q Who didn't, when you say "they"?

12 A DBHDD. But they have corrected that and  
13 now they do include school counselors when they work  
14 with schools.

15 Q Tell me about that correction.

16 A What do you want to know?

17 Q How did it come about?

18 A Well, they now work with the Department of  
19 Education, with the -- the Department knows more  
20 about what schools are being selected and what  
21 schools are now included in the Apex network.

22 Q How did that change come about?

23 A Just over time as Apex evolved into a --  
24 as new programs developed organically, they realized  
25 what they needed to do to make it work more

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
191

1 effectively.

2 Q And what's the basis for your  
3 understanding that this correction has been made, as  
4 you said?

5 A It's not really a correction. It's just a  
6 natural progression of development of a program, and  
7 I know -- and I've learned that from the director  
8 the program, Dante McKay.

9 Q So that --

10 A He works at DBHDD. As I mentioned  
11 earlier, he's the director of adult, adolescent  
12 services.

13 Q And so is it -- are you saying that the  
14 basis for your understanding that this progression  
15 has happened comes from conversations that you've  
16 had --

17 A Yes.

18 Q -- with Mr. McKay? Yes?

19 A That's correct.

20 Q Why do you -- I believe you said that you  
21 feel it's important that school counselors be  
22 included in the Apex process. Why do you think that  
23 is important?

24 A Because Apex counselors, the therapist is  
25 coming into the building, and it makes for a

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIAJune 08, 2022  
192

1 smoother transition and introduction of the  
2 therapist to a student. If the counselor already  
3 knows the students, can introduce them. Also the  
4 counselor can be the contact point when the Apex  
5 person comes into the building and introduced not  
6 only to the students but also to the staff, as well  
7 as parents, for that matter.

8 Q Do you think the Department of Education  
9 should be included in the Apex program?

10 A No, not necessarily. We were advocating  
11 for BHDD to make sure they worked with school  
12 counselors, and that's why Gail Smith, who was  
13 working for the School Counselors Association, was  
14 asking the DOE to help convince Apex, or BHDD, to  
15 work more closely with school counselors.

16 Q When you say we were advocating for DBHDD  
17 to make sure they worked with school counselors, who  
18 is "we"?

19 A Me.

20 Q So returning to this document, you then  
21 write: "I think your organization should ask to  
22 meet with BHDD Commissioner Judy Fitzgerald to  
23 express your concerns. She certainly knows how I  
24 feel about it."

25 Do you see that?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
193

1 A Yes.

2 Q What concerns have you expressed to Judy  
3 Fitzgerald about the Apex program?

4 A What we've already talked about.

5 Q And how did you express those concerns?

6 A Pretty much the same way I expressed it to  
7 you just now, that, Commissioner, please include  
8 school counselors in this process. They have a role  
9 to play and they can make it much easier for your  
10 Apex therapist.

11 Q And did you do that in person?

12 A I know Judy. We talk frequently, when I  
13 was at the Department of Education.

14 Q So is this in a single sit-down meeting or  
15 a series of --

16 A It's over time. As programs -- as I  
17 mentioned earlier, programs developed organically  
18 and you learn what works and what doesn't work.

19 Q And what did Ms. Fitzgerald say to you in  
20 response to the feedback you provided?

21 A That we'll work on it. She was  
22 responsive.

23 Q Who else have you spoken to, if anyone,  
24 about your concerns relating to the Apex program?

25 A I think it was just those two, since

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
194

1 they're more directly -- they're directly involved  
2 with the Apex program.

3 Q So returning to this email, you say: "You  
4 should read HB 514. It will be on the House Floor  
5 today. You will see why BHDD campaigned against the  
6 bill."

7 Do you see that?

8 A Yes.

9 Q And what was HB 514?

10 A I don't recall. There's an HB 154 every  
11 year -- or 541 -- 514.

12 There's an HB 514 every session, every two  
13 years. So I don't recall what that is.

14 Q So would Google be correct that HB 514  
15 could have been the, in 2019, could have been the  
16 creation of the Georgia Mental Health Reform and  
17 Innovation Commission?

18 MR. BEDARD: Object to form; calls for  
19 speculation.

20 A Could be.

21 Q And do you know why DBHDD would campaign  
22 against a mental health --

23 A No.

24 Q -- bill?

25 Are there any other state agencies outside

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
195

1 of DBHDD that have responsibilities relating to  
2 Apex?

3 A Not to my knowledge.

4 Q Does the Apex program have a target  
5 population?

6 MR. BEDARD: Object to form.

7 A I don't know that it has a target  
8 population. I can't really answer that.

9 Q What group of students does it intend to  
10 serve?

11 A It's my understanding it's middle school  
12 and high school age students.

13 Q Any student in middle or high school?

14 A Middle school and high school.

15 Q Could students who receive services  
16 through Project AWARE also benefit from services  
17 provided through Apex?

18 MR. BEDARD: Object to form.

19 A If there is an Apex therapist in the  
20 school that are a part of Project AWARE, yes.

21 Q Do you know whether those three school  
22 systems that participate in Project AWARE also have  
23 Apex services within them?

24 A I don't know.

25 Q Could students who meet the eligibility

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
196

1 criteria for GNETS services benefit, in theory, from  
2 the services offered through Apex?

3 MR. BEDARD: Object to form.

4 A If the therapist was in the building.

5 Q Are Apex services available to students in  
6 the GNETS program?

7 A I don't know if they are one of the 700  
8 schools or not. I don't recall.

9 Q Do you know of any category of students  
10 who are not eligible for Apex services for any  
11 reason?

12 A I'm not aware of any.

13 MS. LILL: I'm going to hand the court  
14 reporter what I'd like to have marked as  
15 Plaintiff's Exhibit 108.

16 (WHEREUPON, Plaintiff's Exhibit-108 was  
17 marked for identification.)

18 BY MS. LILL:

19 Q So this document was produced to the  
20 United States and bears the Bates label GA00557687.

21 It is a document, an email exchange,  
22 between you and Gail Smith, on June 11, 2019.

23 And I meant to ask you about this document  
24 a few minutes ago. But at the bottom of this  
25 document Ms. Smith says -- first of all, I should

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
197

1 ask you, do you recognize this document?

2 A Yes.

3 Q At the bottom, for the bottom of the page,  
4 in her email to you, she says: "School counselors  
5 are asking questions about when/how districts will  
6 receive the funding or the counselor for Apex.

7 We've explained that the funding goes to the CSBs  
8 and they hire the providers. My concern is a  
9 comment that someone made in our meeting yesterday.

10 I believe it was Dante who said school districts  
11 have to request the providers. Do

12 superintendents/principals know that? If they  
13 don't, who is responsible for telling them?"

14 Do you see that?

15 A Yes.

16 Q And you replied, on June 11th: "It's  
17 incredible to me that Dante implied that schools are  
18 not asking for APEX therapists because they may not  
19 know about the programs. The problem they do not  
20 want to admit is DBHDD is not meeting the needs of  
21 school systems. I've had several school  
22 superintendents contact me frustrated with DBHDD  
23 because they do not have the workforce to put APEX  
24 therapists in schools. Effingham County, for  
25 example, told me that their CSB said it would be

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
198

1 years before an APEX would be available. The \$8  
2 million more Governor Kemp gave to BHDD for Apex was  
3 in the news across the State."

4 Do you see all that?

5 A Yes.

6 Q Can you tell me about the sentiments that  
7 you're expressing here about DBHDD's operation of  
8 Apex?

9 A The same as before, and it has been  
10 improved.

11 Q Okay. And at the time did you feel  
12 schools were aware of Apex but unable to secure  
13 mental health services?

14 A No. It's my understanding from this, the  
15 reference was that the process schools would have to  
16 ask for Apex therapists through the CSBs, and the  
17 implication was that the schools were not asking for  
18 help. Well, that wasn't always the case. Dante  
19 thought it was, but when I informed him that schools  
20 are asking their CSB -- or through behavioral  
21 health, DBHDD, for help, and then he looked into it  
22 and he said we can do better with that.

23 So I went back to what I talked about  
24 earlier, better communication between BHDD and  
25 school districts, and they did improve that

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
199

1 substantially.

2 Q Was this email written at a time when you  
3 were in the deputy superintendent for School Safety  
4 and Climate position?

5 A No. I was still External Affairs.

6 Q You were?

7 A Yes, according to this.

8 Q And was this within your purview of --

9 A I was still working with legislators, and  
10 Gail Smith was a lobbyist for the Georgia School  
11 Counselors Association. So in her capacity as a  
12 lobbyist and me still working with legislators, she  
13 often asked me questions that pertained to state  
14 agencies and to legislation.

15 Q I understand now.

16 What evidence did you have of the scenario  
17 you described in Effingham County. You said here  
18 that the county generally "told me that their CSB  
19 said it would be years before an APEX would be  
20 available."

21 A I talked to the school superintendent in  
22 Effingham County. He called me.

23 Q And did he call you frustrated?

24 A Yes.

25 Q And what did you say to him? Or her?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
200

1           A       I would relay that information to BHDD and  
2       hopefully they would improve the process, which they  
3       did.

4           Q       You reference that Governor Kemp gave an  
5       additional \$8 million to Apex. What was your  
6       opinion of how that money was being utilized?

7           A       How it was being utilized?

8           Q       Uh-hum.

9           A       I didn't have an opinion about how it was  
10      being utilized. I had an opinion with Dante McKay  
11      and the Commissioner about how it should be  
12      utilized, which was expanding Apex and more  
13      collaboration with school counselors.

14                   So that funding provided them more  
15      opportunity to find more providers.

16          Q       Do you believe Apex could be expanded  
17      today?

18          A       With funding.

19          Q       Should it be?

20          A       Well, two things: You have to have  
21      funding. You also have to have workforce.

22                   MR. BEDARD: Object to form on the last  
23      question.

24                   And on the prior one.

25          Q       Back to Exhibit 106, which is the

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
201

1 PowerPoint that I had provided you, on Page 18 --

2 A 18?

3 Q 18. The very last bullet here says:  
4 "GAP," which seems to be the Georgia Apex Project.

5 Is that right?

6 A Yes.

7 Q GAP is collaborating with Project AWARE.  
8 Can you tell me what that collaboration  
9 looks like?

10 A If there's a therapist in the school that  
11 was provided by Apex, then the staff being aware  
12 through the mental health awareness training.  
13 That's the connection.

14 They would make the -- they would know how  
15 to make appropriate referral to the Apex therapist.

16 Q Is awareness part of the Apex model as  
17 well?

18 A No.

19 Q So who identifies the student need in  
20 order to refer the student to an Apex therapist?

21 A The process works the same as it works for  
22 a school counselor. A teacher may make a referral  
23 to the counselor. In this case the teacher would  
24 make a referral to the counselor, who then makes a  
25 referral to the Apex therapist.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
202

1           The whole idea of Project AWARE is to make  
2 people aware of what to look for.

3           Q     So you, I believe, just stated that the  
4 individuals in the school would -- who might be  
5 participating in GAP and Project Aware might be  
6 collaborating. Is there anybody at the State level  
7 who's dealing with Project AWARE that is  
8 collaborating with somebody who is dealing with  
9 Apex?

10          A     The, uh -- Rebecca Blanton, who is  
11 coordinator for the Project AWARE, and Dante McKay  
12 worked together. Formally and informally. They are  
13 both on the IDT, the Interagency Directors Team.  
14 And many times the Apex gives an update of the IDT  
15 meeting, and Project AWARE gives an update.

16                So, yes, they worked together.

17          Q     Do you think it's important that those  
18 people collaborate?

19          A     Yes.

20          Q     Why?

21          A     They're serving the same children.

22          Q     And what are the benefits of interagency  
23 collaboration when you're serving the same  
24 population?

25                MR. BEDARD: Object to form.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
203

1 A Access to mental health services.

2 Q Do you believe that interagency  
3 collaboration expands access to mental health  
4 services?

5 A Yes.

6 Q When you were at the Department of  
7 Education, were those individuals overseeing the  
8 Apex program and Project AWARE coordinating with the  
9 individuals overseeing the GNETS program?

10 A I don't know.

11 Q If there was such collaboration, would it  
12 be of value?

13 MR. BEDARD: Object to form.

14 A It depends on the type of collaboration.

15 Q What do you mean by that?

16 A It depends on the needs of the student.

17 Q What would good, positive collaboration  
18 look like in that regard?

19 A With GNETS students?

20 Q Between folks overseeing the Apex program,  
21 Project Aware, and the GNETS program.

22 A Again, it would go back to are they  
23 meeting the needs of the students? Is there  
24 something in Project AWARE and something in Apex  
25 that would meet the needs of the students in GNETS?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
204

1 Q Do you think it's safe to assume that  
2 certain GNETS students are going to need counseling  
3 services?

4 A Yes, some of them would need counseling  
5 services.

6 Q And I believe you've already testified  
7 that the goal of the Apex program is to provide  
8 counseling services to students?

9 A Yes.

10 MR. BEDARD: Object to form.

11 Q Is that correct?

12 A Yes.

13 Q So would it be important for the people  
14 overseeing the GNETS program to coordinate with the  
15 people overseeing the Apex program to provide mental  
16 health services in the form of counseling --

17 MR. BEDARD: Object to form.

18 Q -- to a population of students?

19 A Apex is run by BHDD. That would be their  
20 decision.

21 Q I understand it would be their decision  
22 but I'm asking you in your opinion as somebody who  
23 has done extensive work coordinating and advocating  
24 for mental health services in schools, and for  
25 interagency collaboration, if you think that that

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
205

1 kind of collaboration would be important?

2 A It could be important if the need was  
3 there.

4 Q And do you think that a percentage of  
5 GNETS students are going to need counseling  
6 services?

7 MR. BEDARD: Object to form.

8 A A percentage would need counseling, just  
9 like a percentage of kids in a typical school would  
10 need counseling.

11 Q Do you think it's a higher percentage of  
12 students in the GNETS program who need counseling?

13 A Most likely.

14 MR. BEDARD: Object to form.

15 Q Does the Department of Education play any  
16 role with respect to budgeting for Apex?

17 A No.

18 Q Does the Department of Education have any  
19 role with respect to strategic planning for Apex?

20 A Not that I'm aware.

21 MS. LILL: If we could do just like a  
22 five-minute break.

23 MR. BEDARD: Sure.

24 MS. LILL: That would be great.

25 THE VIDEOGRAPHER: Off the record at 4:24

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
206

1 p.m.

2 (A recess was taken.)

3 THE VIDEOGRAPHER: We're back on the  
4 record at 4:42 p.m.

5 BY MS. LILL:

6 Q Dr. McGiboney, I want to direct you back  
7 to Exhibit 108, which is the email between you and  
8 Gail Smith.

9 In this email you say to Ms. Smith that  
10 "DHDD is not meeting the needs of school systems."

11 What is the basis -- we talked about some  
12 of the basis for that statement earlier, where you  
13 talked about the Apex program not appropriately sort  
14 of including school counselors. Is that an accurate  
15 statement?

16 A Yes.

17 Q And is there any other basis for the  
18 statement that DBHDD is not meeting the needs of  
19 children in schools?

20 A No. It was limited to that.

21 Q Does the Department of Education do any  
22 behavioral health needs assessments?

23 A No.

24 Q Do they survey superintendents about the  
25 behavioral health needs?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
207

1 A Not to my knowledge.

2 MS. LILL: I'm back to share -- somebody  
3 is telling me there's no sound.

4 Can you all hear us?

5 MR. BEDARD: She wrote that at 4:30.

6 MS. LILL: Sorry. I don't know why but  
7 things are just coming through. I don't know.  
8 Sorry. Okay.

9 (Discussion ensued off the record.)

10 MS. LILL: Let me share.

11 I'm going to share a document on my screen  
12 that I'd like to mark Plaintiff's Exhibit 109.

13 (WHEREUPON, Plaintiff's Exhibit-109 was  
14 marked for identification.)

15 BY MS. LILL:

16 Q Earlier -- and this was marked, this was  
17 produced to the United States with the Bates-stamp  
18 GA01603064.

19 And this is an email from December 8,  
20 2018, from you, Dr. McGiboney, to Kevin Tanner.

21 I shared a version of this document  
22 earlier, which appeared to be incomplete. Do you  
23 recall us reviewing --

24 A Yes.

25 Q -- this document?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
208

1           Okay. This is -- this appears to be the  
2 complete version that you actually sent to Mr.  
3 Tanner. I believe the version that we showed you  
4 earlier may have been a draft version. So I wanted  
5 to show you this document, and I want to direct your  
6 -- I want to direct your attention to the third  
7 paragraph.

8           And here it says: "I think First Lady  
9 Kemp should focus on children's mental health birth  
10 to 18. A comprehensive mental health plan for  
11 children has not been developed in Georgia. No  
12 matter what GaBHDD says and tries to make you  
13 believe there is not a comprehensive mental health  
14 plan for children."

15           Do you see that?

16           A     Yes.

17           Q     Why do you say there's not a comprehensive  
18 mental health plan for children?

19           A     What is that date of that? '18?

20                 '18. Well, that was part of the reason  
21 why the Behavioral Health Reform and Innovation  
22 Commission was created, and from that the Georgia  
23 Mental Health Parity Act was passed this year, and  
24 that's moving toward a comprehensive mental health  
25 plan for children, adolescents and adults.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
209

1 Q Moving towards?

2 A Yes. The bill is in 77 pages and it's  
3 very comprehensive legislation.

4 Q So up until now, do you believe there's  
5 been a comprehensive mental health plan for children  
6 in Georgia?

7 A There's some gaps.

8 Q And what are those gaps?

9 A Workforce -- workforce shortages  
10 primarily.

11 Q Anything else?

12 A It all starts from that, and then I don't  
13 want to have to rehash the entire Mental Health  
14 Parity Act, but it addresses many of those reasons  
15 for shortages, and also the additional funding that  
16 could be developed from the bill that requires  
17 parity.

18 Q Are you familiar with the range of  
19 publicly available behavioral health services  
20 available to children in Georgia?

21 A Not the full range.

22 Q You are not -- you are not aware of the  
23 full range of behavioral health services available  
24 to students in Georgia?

25 A I'm not sure anyone is aware of the full

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
210

1 range.

2 Q Publicly available?

3 A Well, there's private providers as well.

4 Q But I'm asking about the full range of  
5 publicly available services.

6 A Publicly available would be primarily  
7 through BHDD, the Community Service Board.

8 Q So would counseling be one of those  
9 services?

10 A Well, there's, there's a lot of LPCs that  
11 are hired by BHDD, and there's a lot of LPCs that  
12 are private providers.

13 Q Would peer support be a publicly available  
14 service?

15 A Care support?

16 Q Peer.

17 A Peer support? Well, there are peer  
18 support specialists trained by or funded by BHDD,  
19 certified peer specialists. There's probably two or  
20 3,000 of those trained, funded by BHDD and being  
21 trained with assistance from the Georgia Parent  
22 Support Network.

23 Q And how about intensive intervention  
24 services and supports?

25 A BHDD is responsible for intensive.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
211

1 Q Do you think it's important for students  
2 to have access to these services and supports in  
3 schools?

4 A Yes. Anyone who has a mental health  
5 issue, whether it's a child or adolescent or adult,  
6 should have access to mental health services. And  
7 that was the genesis of the Mental Health Parity  
8 Act.

9 Q And that they have them -- they have  
10 access to them in schools?

11 A If that's the most accessible point. Some  
12 parents prefer not to have that done at the school.

13 Q We are going to return to the Psychology  
14 of School Climate. Let me just pull it up.

15 MR. BEDARD: It's the digital one?

16 MS. LILL: It's digital, yeah.

17 Happy to know our Department of Justice  
18 library has a copy of Psychology of School  
19 Climate on hand.

20 BY MS. LILL:

21 Q So starting right here, this is on Page  
22 194.

23 You say: "Minority students who have  
24 opportunities to communicate with other students in  
25 conditions that encourage interactions,

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
212

1 connectedness, and engagement benefit from a  
2 positive school climate, and there is a reason why."

3 Do you see that?

4 A Yes.

5 Q And can you tell me what the reason why?

6 A If you read the next sentence, it  
7 explains.

8 Q "According to Griffith schools with more  
9 racially and ethnically diverse student populations  
10 show significantly less satisfaction with the school  
11 environment"?

12 A Yes.

13 Q Please explain what that means.

14 A That in -- the research has shown, that is  
15 referenced there -- and you have to read further on  
16 to it -- that high schools that were highly  
17 segregated, the students, the minority students were  
18 not pleased with the environment of the school.

19 Q So American high schools that are highly  
20 segregated are not -- the students are not pleased  
21 with the environment of the school?

22 A That's what the research was showing from  
23 the University of California.

24 Q Is this true -- does this research apply  
25 for all minority --

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
213

1 A I can't answer that.

2 Q -- populations?

3 Do you believe that minority students who  
4 have opportunities to communicate with other  
5 students in conditions that encourage interactions,  
6 connectedness, and engagement benefit from a  
7 positive school climate?

8 A Yes.

9 Q Do you believe that applies to students  
10 with disabilities?

11 A Yes.

12 Q Do you believe that applies to students  
13 with emotional and behavioral disabilities?

14 A It applies to all students.

15 MS. LILL: I'm going to be sharing a new  
16 exhibit electronically, which I'd like to have  
17 marked Plaintiff's Exhibit 109.

18 Q Dr. McGiboney, this is --

19 I think this is Exhibit 110.

20 The other one was on the record.

21 MS. LILL: It's on the record.

22 So, I'm sorry. Thank you for that.

23 I think they were making that noise  
24 because they didn't like your book. A lot of  
25 groaning.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
214

1 THE WITNESS: That's a real possibility.

2 (Discussion ensued off the record.)

3 MS. LILL: It's just because it's Exhibit  
4 110. So no worries about that.

5 (WHEREUPON, Plaintiff's Exhibit-110 was  
6 marked for identification.)

7 BY MS. LILL:

8 Q So, Dr. McGiboney, Exhibit 110 is another  
9 book that you wrote, the manuscript which was  
10 provided by the State in its production and is  
11 labeled GA0163061.

12 And this book is called "A Journey with  
13 Children and Characters."

14 Are you familiar with this book?

15 A Yes.

16 Q Did you write this book?

17 A Yes.

18 Q Was this book published?

19 A Yes.

20 Q In what year?

21 A I don't recall.

22 Q Let me just see if I can find it. It  
23 looks like it was copyright 2019.

24 Does that sound right?

25 A Sounds about right.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
215

1 Q So on Page 113 of this document, you -- a  
2 little earlier frankly -- Page 112 you talk about a  
3 Level System.

4 I can give you control of this if you  
5 you'd like to review the Level System.

6 You should have control of the document  
7 now.

8 A You want me to do something?

9 Q I wanted to give you the opportunity to  
10 review these pages, because you discuss a Level  
11 System, and I want to ask you something that  
12 pertains to that. So I just want to make sure you  
13 have an opportunity to familiarize yourself with  
14 your discussion of the Level System.

15 A Okay.

16 Q If you are already familiar with it,  
17 that's fine.

18 In this document you say: "Concepts, such  
19 as the Level System and other forms of segregation  
20 are not only unholy and inhuman but downright  
21 dangerous for a nation."

22 Do you see that?

23 A Yes.

24 Q Is that your belief?

25 MR. BEDARD: Object to form.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
216

1           A       You're taking it out of context. Level  
2       System referenced there is the Level System some  
3       school districts had in the 1960s, where they put  
4       students in Level 1, Level II, or Level III, based  
5       on what they thought their cognitive or academic  
6       abilities were.

7                       So that's the old system. Schools haven't  
8       done that Level System in decades.

9           Q       So in this, in this sentence here, you  
10       say: "Dehumanizing concepts such as the Level  
11       System," which you've just explained?

12          A       Right.

13          Q       And then you say: "And other forms of  
14       segregation are not only unholy and inhuman but  
15       downright dangerous for a nation."

16                     And I'm asking you, aside from the Level  
17       System, do you believe that forms of segregation are  
18       unholy and inhuman?

19          A       Yes, I do.

20          Q       How so?

21                     MR. BEDARD: Object to form.

22          A       Because the segregation and the term I'm  
23       talking about there is not having access to  
24       appropriate education or not having access to  
25       healthcare, not having access to things that apply

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
217

1 to quality of life based on race or sex or national  
2 origin, based on categories of possible  
3 discriminations. Simply not right to be segregated  
4 based on those characteristics, and therefore  
5 segregation is, to me, not having access to quality  
6 of life.

7 Q Those different classes that you just  
8 referred to, would people with disabilities be  
9 included in that list?

10 A Could be, yes.

11 Q Is segregation stigmatizing?

12 MR. BEDARD: Object to form.

13 A It can be.

14 Q Is that part of why you consider it to be  
15 unholy and inhuman?

16 A Yes.

17 Q What made the Level System dehumanizing?

18 A It placed children in categories  
19 arbitrarily. And too often Level I, which was in  
20 the lower level of education potential, were  
21 overrepresented by poor children and children of  
22 color and children who didn't have good language  
23 skills. And Level III were represented by --  
24 overrepresented by children who had access to higher  
25 quality of life opportunities, usually higher

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
218

1 income.

2 Q How does segregation, if at all, affect  
3 school climate?

4 A I don't know because there has not been  
5 any research in segregation in school climate that  
6 I'm aware of.

7 Q If students of a particular minority group  
8 are segregated, away from other peers, can that  
9 create a sense of stigma?

10 MR. BEDARD: Object to form.

11 A It depends on what you mean by other  
12 peers, because -- well, it depends on what you mean  
13 by other peers.

14 Q Peers who are not in that minority group?

15 A Well, I think -- it's opinion that the  
16 more and more varied people that children have  
17 access to, the richer their opportunities are.

18 Q In what ways is segregation stigmatizing?

19 MR. BEDARD: Object to form.

20 Q You earlier said segregation can be  
21 stigmatizing, and I'm asking you what ways it can be  
22 stigmatizing?

23 A If segregation is based on labeling or  
24 categorization or characterization or one of those.

25 Q Do you think it's important for students

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
219

1 with behavioral disabilities to have positive role  
2 models for good behavior?

3 A Yes.

4 Q Does that -- how is that best effectuated?

5 MR. BEDARD: Object to form.

6 A I assume you're talking about adult role  
7 models?

8 Q No. I'm talking about who have students  
9 who have behavioral challenges, because they have a  
10 disabilities is it important for them to have access  
11 to peers who have positive behavior, who they can  
12 learn from?

13 A Yes. It's always good for a child being  
14 in a situation where they can learn self-regulation.

15 Q And if students are in a facility attended  
16 only by other students with behavioral challenges,  
17 does that become challenging?

18 MR. BEDARD: Object to form.

19 A Well, I don't want to stigmatize or  
20 categorize children like you're talking about  
21 because you're kind of categorizing them yourself.

22 But children can interact with other types  
23 of children that have similar problems but also they  
24 can interact with children that have different types  
25 of problems, but still the interaction can be rich

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
220

1 and can be wholesome, and it can be effective.

2 MS. LILL: We're in the home stretch, Dr.  
3 McGiboney.

4 MR. BEDARD: Famous last words.

5 MS. LILL: It is a home stretch.

6 I'm going to hand the court reporter what  
7 I would like to have marked as Plaintiff's  
8 Exhibit 111.

9 (WHEREUPON, Plaintiff's Exhibit-111 was  
10 marked for identification.)

11 BY MS. LILL:

12 Q This is a document that was produced to us  
13 by the State. It bears the Bates-stamp GA00549038,  
14 and it is an email chain between you, Dr. McGiboney,  
15 and Talley Wells, from December 29th, 2018. And it  
16 has -- it's "Subject: Re: ?"

17 And I want to direct you to your response  
18 to Mr. Wells at the top.

19 First of all, who is Talley Wells?

20 A At that time he was the director of  
21 Georgia Appleseed Law and Justice Center.

22 Q And in your email on December 29th to Mr.  
23 Wells, you write: "We have" -- this is toward the  
24 bottom of your email.

25 "We have much more to do to maintain our

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIAJune 08, 2022  
221

1 gains while moving forward at the same time. We  
2 still have alternative school quality issues, GNET  
3 issues, discipline tribunal issues and others, but  
4 there are things we can do if we think differently.  
5 For example, incentivize local school systems to  
6 bring the student 'home' by funding the students at  
7 \$18,000 instead of the approximately \$12,500 now.  
8 Sure, the state would have to upfront more money but  
9 look at how much could be saved on the long run."

10 Do you see that?

11 A Yes.

12 Q What did you mean in 2018, nearly 2019  
13 here, when you said "we still have GNET issues"?

14 A I don't know if it was related -- it was  
15 apparently, looking at the rest of the email, it was  
16 related to identifying through the IEP process the  
17 students who were most appropriate for GNETS.

18 Q Where do you see that?

19 A Well, you're asking me why I said that.  
20 That's what I'm answering to your question, is it  
21 was probably in relation to the conversation that I  
22 had with him about GNETS and IEPs.

23 Q Okay. Were there any other GNET issues  
24 that you believe you were referring to at this time?

25 A Not at that time, not that I'm aware of.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
222

1 Q And what specifically about student IEPs  
2 and GNETS were you --

3 A Well --

4 Q -- identifying?

5 A -- Talley and I had talked about the  
6 funding for GNETS. He was concerned and Appleseed  
7 was concerned about whether the funding was  
8 appropriate or should the funding be reviewed for  
9 GNETS.

10 Q And tell me what you mean about -- what  
11 you mean by that?

12 A If the GNETS needed more funding. As I  
13 recall.

14 Q And what did -- what was your belief about  
15 that?

16 A Public education can always use more  
17 funding and programs for all children. GNETS,  
18 whether it's a GNETS program or other programs, can  
19 always benefit from more funding.

20 Q And what did Mr. Wells feel about that, if  
21 you know?

22 MR. BEDARD: Object to form.

23 A Well, I can't say what he felt about it.  
24 Georgia Appleseed is an advocacy group for children.

25 Q You say: "There are things we can do if

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
223

1 we think differently."

2 In what ways do you think that you need to  
3 think differently with respect to GNETS?

4 A What services they have, and is there --  
5 are they asking for different services, would be the  
6 context of that.

7 Q Can you explain the idea that you're  
8 putting forth in this email about incentivizing  
9 local school systems to bring the student home?

10 A Incentivize is related to more awareness,  
11 more aware of mental health issues, and that was  
12 kind of the genesis of providing mental health  
13 awareness training for educators, so they would know  
14 more about what behavioral health issues look like  
15 and how they're manifest.

16 Q And what did you mean when you said a  
17 local school system could be incentivized to bring  
18 the student home?

19 A If they understood more of mental health  
20 issues, and perhaps that could in the long run  
21 influence the IEP.

22 Q So that the child could be served in their  
23 general education setting?

24 A If, if that was the most appropriate  
25 place, yes.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
224

1 Q Is -- can that be the most appropriate  
2 place when more services are available there?

3 A It depends on the individual.

4 MR. BEDARD: Object to form.

5 Q What do the dollar amounts you offer  
6 represent?

7 A Approximations.

8 Q So why would \$18,000 incentivize a local  
9 school district to bring the student home?

10 MR. BEDARD: Object to form.

11 A The point being if they were brought home,  
12 they would probably need more services or different  
13 types of services, which would cost more.

14 Q Did you just say if they were brought home  
15 they would probably need more services, which would  
16 cost more?

17 A Yes.

18 Q Why do you believe that?

19 A It's just speculation on my part, that if  
20 they come back to the school district and they have  
21 high-level needs based on the IEP, they're going to  
22 need more services there, at the school.

23 Q Are you aware of what the State  
24 appropriates to the GNETS program annually?

25 A No.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
225

1 Q If I told you it was \$75 million, would  
2 you be surprised?

3 MR. BEDARD: Object to the form.

4 A It's just the number by itself. I really  
5 would not have reaction to it. It would depend on  
6 how many students and the services they're receiving  
7 and the IEP.

8 I keep going back to the IEP, because  
9 that's the controlling document. That determines  
10 what they need.

11 Q So I'm still trying -- I just really want  
12 to understand the difference between the 18,000 and  
13 the 12,500 and why you -- just sort of what the  
14 basis for those numbers are.

15 A That long ago, I don't know. I don't know  
16 what the full context of that email was about, was a  
17 broader discussion than what's reflected here, and  
18 that broader discussion was what more, if anything,  
19 could we do for students who have emotional and  
20 behavioral disabilities.

21 Q How else, in your opinion, could school  
22 districts be incentivized or equipped to serve  
23 students with emotional and behavioral disabilities  
24 and in more integrated settings?

25 A I think some of that goes back to

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
226

1 workforce issues in the mental health area.

2 MS. LILL: I'm handing the court reporter  
3 what I'd like to have marked as Plaintiff's  
4 Exhibit 112.

5 (WHEREUPON, Plaintiff's Exhibit-112 was  
6 marked for identification.)

7 BY MS. LILL:

8 Q This is a document that was produced to us  
9 by the State, and it bears the Bates No. GA00561590,  
10 and this, Dr. McGiboney, is an email chain between  
11 you and Vickie Cleveland from August of 2019.

12 A Uh-hum. (Affirmative.)

13 Q The subject matter is "Very Important:  
14 Expansion of School Nursing Services."

15 So this email chain starts with an email  
16 from you to superintendents about a joint effort to  
17 enhance access to school nursing --

18 A Yes.

19 Q -- for students. Do you see that?

20 A Yes.

21 Q Who was involved in that joint effort?

22 A DCH.

23 Q And the Department of Education?

24 A Yes.

25 Q And Ms. Cleveland emailed you asking

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
227

1 whether GNETS programs have access to an expansion  
2 of nursing services in connection with this new  
3 initiative; is that correct?

4 A Correct.

5 Q Do you remember this exchange?

6 A Yes.

7 Q And in your response, at the very top of  
8 this email, you state that: "State Medicaid is  
9 checking into if and how GNETS and other programs  
10 might qualify for expanding of school nursing  
11 services. In the meantime, the general belief was  
12 school nurses could bill under Special Education  
13 provisions of Medicaid. I'll let you know what the  
14 State Medicaid finds out from CMS."

15 Do you see that?

16 A Yes.

17 Q Then you go on to say that the general  
18 belief was -- "the general belief was school nurses  
19 could bill under Special Education provisions of  
20 Medicaid." Right.

21 Earlier in this email chain you ask Ms.  
22 Cleveland whether GNETS school nurses are billing  
23 for Medicaid now, and she says, "The Futures program  
24 is not currently billing for Medicaid."

25 Do you see that?

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
228

1 A Yes.

2 Q Would GNETS be leveraging Medicaid to pay  
3 for needed mental health and therapeutic services  
4 for students in the program?

5 MR. BEDARD: Object to form; calls for a  
6 legal conclusion.

7 A I don't know.

8 Q Can mental and behavioral health services  
9 for students be billed to Medicaid?

10 A I don't know about the --

11 MR. BEDARD: Same objection.

12 A I don't know about the mental health  
13 services.

14 Q Can behavioral health services?

15 A I don't know about that.

16 This effort was a joint effort with the  
17 Department of Education, DCH, to send in an  
18 amendment to the State Medicaid Plan, like 16 other  
19 states at that time had done, to expand school  
20 nursing services for children. That was school  
21 nursing services. It wasn't behavioral health,  
22 mental health. It was school nursing services.

23 School nurses do not provide mental  
24 health.

25 Q Right.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
229

1 MR. BEDARD: And just for the record, I  
2 lodge an objection to that last question.

3 BY MS. LILL:

4 Q Are you aware of schools -- in your role  
5 in the Department of Education, were you aware of  
6 schools billing Medicaid for the provision of  
7 medical services that were provided to students in  
8 schools?

9 A Yes. School nurses have been able to bill  
10 Medicaid for certain school nursing services.

11 Q Are you aware of other services aside from  
12 school nursing services --

13 A Not that I'm aware of.

14 Q Let me just finish the question so I have  
15 it on the record.

16 A I'm sorry.

17 Q It's okay.

18 So are you aware of other services aside  
19 from nursing services where schools have effectively  
20 billed Medicaid for coverage of those services?

21 A Not that I'm aware of.

22 Q If you weren't aware of that, who at the  
23 Department of Education would be aware of that?

24 A That being schools --

25 Q Any effort -- yeah, of any schools that

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
230

1 were billing Medicaid for services aside from school  
2 nursing services.

3 MR. BEDARD: Object to form.

4 A I don't know that anybody at the  
5 Department would know that.

6 Q In your time at the Department, did you  
7 ever have any discussions with anybody else in state  
8 agencies, whether at the Department of Education or  
9 elsewhere, about schools billing Medicaid for the  
10 provision of medical services to students?

11 A Medical services?

12 Q Let's start with medical.

13 A Yes, the school nursing.

14 Q Okay. Same question, in your time at the  
15 Department, did you ever have any discussion with  
16 anybody else in the State, whether at the Department  
17 of Education or elsewhere, about schools billing  
18 Medicaid for the provision of mental health or  
19 behavioral health services for children?

20 A I don't recall that coming -- I don't  
21 recall that being in any discussions that I was  
22 involved in except until there was some discussion  
23 with -- when Apex first came up about the different  
24 ways to expand the workforce and to expand access,  
25 but that was in the initial stages of the discussion

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
231

1 about -- when BHDD first told us about Apex, but  
2 then they got funding for the Apex program.

3 Q You have referenced a number of times this  
4 equity bill that just passed?

5 A Yes. Parity bill.

6 Q Parity bill. Does the parity bill address  
7 billing Medicaid for --

8 MR. BEDARD: Object --

9 Q -- billing Medicaid for the provision of  
10 mental health or behavioral health services to  
11 students in schools?

12 MR. BEDARD: Object to form.

13 A I don't know if it does or not. It's a  
14 very comprehensive, very complex bill, and I can't  
15 say if it does or does not.

16 Q Who would know if it does?

17 MR. BEDARD: Object to form.

18 A I can read the bill.

19 Q So the -- this very complex parity bill  
20 that you refer to, when I asked you about a  
21 comprehensive mental health plan for children, you  
22 replied and said that -- please tell me if this is  
23 correct -- but that you felt that there wasn't yet a  
24 comprehensive mental health plan for children in  
25 place but that this parity bill was getting the

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
232

1 State on its way to one?

2 A Yes.

3 Q And you have also referenced this parity  
4 bill as being complex and very lengthy. Have -- I  
5 guess what forms the basis of your opinion that that  
6 plan is going to get the State of Georgia to a  
7 comprehensive children's mental health plan?

8 A The bill is a --

9 MR. BEDARD: Object to -- I object to the  
10 form; asked and answered.

11 Go ahead.

12 Q You can answer the question.

13 A The bill is accompanied by increase in  
14 funding for mental health, substantial increase in  
15 funding for mental health, which means the CSBs will  
16 get more funding.

17 It also includes incentives for more  
18 professionals to go into mental health professions,  
19 student loan forgiveness for students who would go  
20 into mental health and agree to practice in the  
21 State of Georgia.

22 The bill includes increase to the funding  
23 to mental health providers. Georgia is one of the  
24 lowest in the nation in the mental health provider  
25 funding, reimbursement rates.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
233

1           So the reimbursement rates will be  
2 increased, which will bring more providers back into  
3 the insurance network, and that will address more  
4 and provide an increase in workforce development.

5           And all those access points will benefit  
6 not only adults but children as well.

7           Q     Have you read the entire bill?

8           A     Yes.

9           Q     Will enhanced funding a loan create a  
10 successful, comprehensive children's mental health  
11 plan?

12           MR. BEDARD: Object to form.

13           A     The bill covers different levels of  
14 intervention. It's not just the complex needs.  
15 There's portions of the bill that address complex  
16 needs of children.

17           Children have complex needs, I should say.

18           But it also includes prevention and  
19 intervention for early identification of children  
20 who may have behavioral mental health needs for  
21 early treatment.

22           All those are elements that would be  
23 necessary if you had a comprehensive plan.

24           Q     Does the plan address how state agencies  
25 are supposed to interact to effectuate -- I'm sorry

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
234

1 -- the bill, does that address how state agencies  
2 are supposed to interact to effectuate the goals  
3 that you have articulated --

4 MR. BEDARD: Object --

5 Q -- the bill?

6 MR. BEDARD: Sorry. Object to form.

7 A Many state agencies in some way, obviously  
8 BHDD, touches mental health. But other state  
9 agencies also in some way touch mental health.  
10 Either they're trying to find mental health services  
11 replacement or peer support specialists.

12 So the bill recognizes that those state  
13 agencies need to work together. So in the bill the  
14 Governor's Office of Student Health and -- Health  
15 Strategy and Coordination has oversight of mental  
16 health in Georgia. That gives the oversight for  
17 that office to coordinate and make sure that each  
18 state agency that touches mental health are  
19 coordinating their efforts with other state  
20 agencies.

21 Q So I just want to summarize what you said  
22 to make sure I understand it.

23 So in the bill, the Governor's Office of  
24 Student Health and Health Strategy?

25 A Office of Health Strategy and

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
235

1 Coordination.

2 Q I'm sorry. I'm reading the transcript and  
3 I -- and so the Office of Health Strategy and  
4 Coordination within the Governor's Office oversees  
5 what?

6 A The application of the Mental Health  
7 Parity Bill and the -- the interconnectivity of the  
8 state agencies when mental health is, is the issue.

9 So that DFCS, for example, and DCH, they  
10 cannot work alone without working with BHDD if the  
11 child has some mental health or behavioral needs.

12 So the oversight means to encourage all  
13 those state agencies to work together.

14 Q Does that include the Department of  
15 Education?

16 A Yes.

17 Q I want to just ask, if in preparation for  
18 today's deposition, if you reviewed any transcripts  
19 of prior depositions in this case?

20 A No.

21 Q So just a few final questions about  
22 document collection.

23 Did you receive a litigation hold notice  
24 in connection with this case?

25 A I received a subpoena.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
236

1 Q Do you recall at any point receiving  
2 what's called a litigation hold notice?

3 A No. I'm not sure what that is.

4 Q Were you ever asked to collect documents  
5 as part of the State's effort to respond to our  
6 discovery requests?

7 A For today?

8 Q In general, over the last -- we filed this  
9 lawsuit in 2016.

10 A Actually, I don't remember.

11 Q Okay.

12 A I don't remember.

13 Q Have you collected -- have you personally  
14 collected any documents in connection with the  
15 State's effort to respond to our -- to the  
16 Department of Justice's discovery requests?

17 A No.

18 Q Can I ask you one last thing?

19 MS. LILL: I'm going to hand the court  
20 reporter what I'd like to have entered as  
21 Plaintiff's Exhibit 113.

22 (WHEREUPON, Plaintiff's Exhibit-113 was  
23 marked for identification.)

24 BY MS. LILL:

25 Q This was a document that was produced to

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
237

1 us. It's labeled GA000 -- sorry. GA00007169.

2 And Dr. McGiboney, this is an email  
3 exchange between you and Talley Wells on August of  
4 2020. The subject is "Re: "Greetings from North  
5 Carolina and a Favor."

6 And your email to Mr. Wells on August  
7 25th, 2020, which is on the second page, you begin  
8 that email by saying: "Great to hear from you,  
9 Talley."

10 Do you see that response?

11 A Yes.

12 Q Below, in the next paragraph, it says: "I  
13 need to let you know that I was recently blindsided  
14 at the Georgia Department of Education. They took  
15 mental health, school climate/PBIS, school safety,  
16 student discipline, and policy work away from me,  
17 which left me working with only public health. It  
18 was a devastating blow to me and totally unexpected.  
19 I'm trying to fight off despondency. I guess they  
20 don't want employees to have opinions and ask  
21 questions and make suggestions."

22 You say: "I purposely included Dante in  
23 this email so he will know what is going on, because  
24 I'm sure he is not aware of the internal picture and  
25 I don't want him to think I've lost interest in

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
238

1 children's mental health or school climate."

2 Do you recognize this email?

3 A Yes.

4 Q You say "they took mental health, school  
5 climate/PBIS, school safety, student discipline, and  
6 policy work away from me."

7 Who took those areas away from you?

8 A I don't want to answer that question.

9 Q Dr. McGiboney, you're under oath and I  
10 have to ask you to answer the question.

11 A The chief of staff.

12 Q And that would be?

13 A Mr. Jones.

14 Q What did it mean for Matt Jones to take  
15 these areas away from you? Did they reassign them  
16 to someone else?

17 MR. BEDARD: Object to form.

18 A I don't know.

19 Q Did they bar you from working on them all  
20 together?

21 A My goal was -- I was shifted to work  
22 exclusively with public health. This was during the  
23 COVID.

24 Q Did Mr. Jones allow you to work on mental  
25 health and these other issue areas but take away

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
239

1 decision-making authority?

2 A No. My job was public health.

3 Q How did you learn that these areas were  
4 taken away from you?

5 A An email that was sent to DOE employees.

6 Q Which DOE employees?

7 A Everyone, I suppose.

8 Q Do you recall?

9 A It went all DOE. To all DOE.

10 Q And did the email -- what did the email  
11 say specifically?

12 A That some of these -- it didn't list all  
13 of these here but it listed like PBIS and those that  
14 would be shifted over to whatever department it was.  
15 Teaching and learning, I think. I don't recall it  
16 mentioning mental health.

17 Q Do you recall who wrote that email?

18 A Matt Jones.

19 Q And did you -- did Matt Jones provide you  
20 with any rationale for taking these areas away from  
21 you?

22 A He called me one day and said public  
23 health has requested that you work with them because  
24 of the pandemic and they have great respect for you  
25 and they want you to work with public health, to

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
240

1 which I replied, well, that's good, I'm working with  
2 them now.

3 He never mentioned anything about all  
4 those being taken away until I saw the email that  
5 went to everyone. He never mentioned that to me.

6 Q What was your response to Matt Jones when  
7 you learned that these --

8 A He did not return my phone calls, nor did  
9 the superintendent.

10 Q So you attempted to contact him by  
11 phone to --

12 A -- yes.

13 Q -- discuss this?

14 And he did not respond to any of your  
15 calls?

16 A Left messages for both of them and neither  
17 one of them responded.

18 Q You say in this document I guess you don't  
19 -- "I guess they don't want employees to have  
20 opinions and ask questions and make suggestions."

21 Did someone tell you this?

22 A That was my opinion.

23 Q Do you believe that your asking questions,  
24 making suggestions, and having opinions about school  
25 mental health and school climate issues got these

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
241

1 subjects taken away from you?

2 A I don't know.

3 MR. BEDARD: Object to form.

4 A I don't know.

5 Q What is your opinion -- you said -- when I  
6 said to you, I quoted, "I guess they don't want  
7 employees to have opinions and ask questions and  
8 make suggestions," did someone tell you this, and  
9 you said that's my opinion. And what is your  
10 opinion based off of?

11 A There was no rationale for taking all of  
12 those away from me. We were making progress in all  
13 those areas.

14 That was my opinion.

15 Q Why do you think they took these issue  
16 areas away from you?

17 A I don't know. There was never any  
18 complaints about it. In fact, it was always  
19 accolades about the work that was being done. So  
20 why, I don't know.

21 Q Do you have an opinion?

22 A I don't know.

23 Q What were the questions, opinions and  
24 suggestions that you refer to in this email?

25 A How to improve all those programs. And if

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
242

1 I had an opinion about something, I expressed my  
2 opinion.

3 Q And did you feel -- you said: "I guess  
4 they don't want employees to have opinions and ask  
5 questions and make suggestions."

6 Did you feel that your questions and  
7 opinions and suggestions on mental health were  
8 unwelcomed?

9 A I can't answer that because I don't know  
10 why they made that decision.

11 Q You reference in relation to Dante wanting  
12 him to know the internal picture.

13 What is the internal picture that you're  
14 not sure he's aware of?

15 A That all those elements that -- including  
16 the Apex program and mental health, was no longer  
17 working with me.

18 Q Did you discuss these areas being taken  
19 away from you with other colleagues at the  
20 Department of Education?

21 A Not at that time.

22 Q And subsequently, did you discuss this?

23 A Well, people wanted to know what happened.  
24 We had a -- we had a statewide network, school  
25 districts, CSBs, parent support groups. We had a

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIAJune 08, 2022  
243

1 whole network and all of a sudden I'm not part of  
2 it, and people called left and right and texted  
3 messages and personal email messages wanting to know  
4 did I retire, did I leave, did I get a better job  
5 offer. They just wanted to know what happened to  
6 me.

7 Q And when you say network, did you mean a  
8 network of folks interested in mental health?

9 A That. Interested in mental health,  
10 interested in school climate, interested in all  
11 those things listed there.

12 Q Who -- after you -- these areas were taken  
13 away from you, who was overseeing these areas?

14 A I don't know.

15 Q You don't know?

16 A As I recall, the email mentioned -- some  
17 of them but I don't recall what it was. PBIS, as I  
18 mentioned earlier, was going to go to teaching and  
19 learning.

20 I think mental -- I can't remember if  
21 mental health was even mentioned, but some of that  
22 was supposed to go to a new group called Whole  
23 Child.

24 So it was divided up into -- and sent to  
25 other people.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
244

1 Q So if issue areas that pertain to school  
2 mental health and school climate are divided up and  
3 overseen by different people, does that inhibit the  
4 effective provision of mental health and behavioral  
5 services?

6 MR. BEDARD: Object to form.

7 A From the DOE's perspective?

8 Q Yes.

9 A I don't know.

10 Q What would be your opinion about dividing  
11 up issue areas like that?

12 A I don't know how to answer that.

13 Q Well, you were the deputy superintendent  
14 of the Department of --

15 A Right.

16 Q -- Education. Would that be an advisable  
17 way?

18 MR. BEDARD: Object to form.

19 I think it misstates his responsibilities,  
20 but you can answer.

21 A The way it was set up was working.

22 Q Why did you leave the Georgia Department  
23 of Education?

24 A Because I -- I had put my heart and sole  
25 into all that and losing it was, was difficult.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIAJune 08, 2022  
245

1           So the CEO of Sharecare and some others,  
2   when they heard that I was leaving the DOE, because  
3   I gave basically a two-week notice when I was  
4   leaving DOE, and I started getting inquiries of  
5   whether I'd like to come and work for them, and the  
6   CEO of Sharecare took it upon himself to contact me  
7   personally, and he said that some of the work I was  
8   doing, like with the Behavioral Health Reform  
9   Commission, that subcommittee, and my work with the  
10   Council on Alcohol and Drugs, I worked with JDAI,  
11   that could continue, he said.

12           He wanted me to come work for them and  
13   that work -- he would be glad for that work -- for  
14   me to continue to work with those entities that were  
15   serving children.

16           Q     At the time you left the Georgia  
17   Department of Education, did you have concerns about  
18   the State Government's commitment to student mental  
19   health?

20           A     To what?

21           Q     To student mental health.

22           A     Everybody can be replaced. I don't mean  
23   to imply I could not be replaced.

24                   So it just depends on what their goals  
25   were.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
246

1 Q But did you have concerns about the  
2 State's commitment to student mental health?

3 A That's why the -- that's one of the  
4 reasons, in my opinion, and is personally why the  
5 work of the Behavioral Health Reform Commission and  
6 the Mental Health Parity Act was so important.

7 Q Because you did have concerns?

8 A I had concerns about children's mental  
9 health.

10 Q Are you familiar, shy of the Parity Act,  
11 of the Georgia government's efforts to ensure access  
12 to school-based behavioral health?

13 MR. BEDARD: I'm sorry. I didn't quite  
14 understand what that question was. If you can  
15 read it back or if you can repeat it.

16 MS. LILL: Sure.

17 BY MS. LILL:

18 Q So Dr. McGiboney had said I had concerns  
19 about children's mental health in response to my  
20 last question. And I'd like to know, with as much  
21 specificity as you can provide, what those concerns  
22 were at the time that you left the Department of  
23 Education?

24 A The ongoing concern about students having  
25 access to mental health services, whether it was in

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
247

1 the community or in the school.

2 Georgia ranks 48 in the nation according  
3 to the Georgia Mental Health -- to the Mental Health  
4 America 2022 report. 48 in the nation.

5 Q In what regard?

6 A Mental health access.

7 Q And did you have concerns about the State  
8 leadership's oversight of school mental health  
9 initiatives?

10 A I've always had that concern. I'm going  
11 to have that concern until we do something more  
12 about it.

13 Q Did the concern grow when you -- when  
14 those areas were taken away from you?

15 A No. The concern is still going to be  
16 there until we have more access for children.

17 MS. LILL: Dr. McGiboney, I think those  
18 are all of the questions I have for you today.

19 But I just want to note that I think it's  
20 very clear to all of us in reviewing the  
21 documents that were provided from your files  
22 that you have a sincere commitment to mental  
23 health services.

24 I thank you for that.

25 THE WITNESS: Thank you.

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
248

1 MR. BEDARD: If we can take 10 -- what  
2 time is it? We can take till maybe 6 o'clock,  
3 and just let me look over my notes and see if  
4 I've got any questions.

5 MS. LILL: Yeah.

6 THE VIDEOGRAPHER: Off the record at 5:51  
7 p.m.

8 (A recess was taken.)

9 THE VIDEOGRAPHER: We're back on the  
10 record at 6:07 p.m.

11 MR. BEDARD: No questions from us.

12 Dr. McGiboney, I really appreciate your  
13 time. Thank for taking the time out of your  
14 day to come and testify. Appreciate it.

15 MS. LILL: Thank you.

16 THE VIDEOGRAPHER: We're off the record at  
17 6:07 p.m.

18 (Whereupon, the deposition concluded at  
19 6:07 p.m.)  
20  
21  
22  
23  
24  
25

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
249

C E R T I F I C A T E

STATE OF GEORGIA:

FULTON COUNTY:

I hereby certify that the foregoing transcript of GARRY McGIBONEY was taken down, as stated in the caption, and the questions and answers thereto were reduced by stenographic means under my direction;

That the foregoing Pages 1 through 248 represent a true and correct transcript of the evidence given upon said hearing;

And I further certify that I am not of kin or counsel to the parties in this case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 16th day of June, 2022.

*Wanda L. Robinson*

Wanda L. Robinson, CRR, CCR No. B-1973  
My Commission Expires 10/11/2023

GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
250

D I S C L O S U R E

STATE OF GEORGIA ) VIDEOTAPE DEPOSITION OF  
FULTON COUNTY ) GARRY MCGIBONEY - 6/08/22  
Pursuant to Article 10.B of the Rules and  
Regulations of the Board of Court Reporting  
of the Judicial Council of Georgia, I make the  
following disclosure:

I am a Georgia certified court reporter.  
I am here as a representative of Esquire Deposition  
Solutions, LLC, and Esquire Deposition Solutions,  
LLC was contacted by the offices of U.S. Attorney's  
Office to provide court reporter services for this  
deposition. Esquire Deposition Solutions, LLC will  
not be taking this deposition under any contract  
that is prohibited by O.C.G.A. 9-11-28 (c).

Esquire Deposition Solutions, LLC has no  
contract/agreement to provide court reporter  
services with any party to the case, or any counsel  
in the case, or any reporter or reporting agency  
from whom a referral might have been made to cover  
this deposition.

Esquire Deposition Solutions, LLC will  
charge the usual and customary rates to all parties  
in the case, and a financial discount will not be  
given to any party to this litigation.





GARRY MCGIBONEY  
UNITED STATES vs STATE OF GEORGIA

June 08, 2022  
252

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me. Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

\_\_\_\_\_  
Signature of Deponent

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, and executed the above certificate in my presence.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES: